

# EXHIBIT “F”

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF NEW YORK

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3 SIDNEY MANES, administrator of the  
4 estate of HECTOR RIVAS,

Plaintiff,

5  
6 -vs-

Case No.:  
5:19-cv-00844

7 ONONDAGA COUNTY; et al.,  
8 Defendants.

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9 DEPOSITION

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10

11 WITNESS: WILLIAM FITZPATRICK

12 DATE: Thursday, October 12, 2023

13 START TIME: 9:59 a.m.

14 END TIME: 2:48 p.m.

15 LOCATION: Bousquet Holstein, PLLC  
16 110 West Fayette Street  
Syracuse, New York 13202

17 BEFORE: Elyse M. Addabbo  
18 Court Reporter and Notary Public

19 JOB NUMBER: 20255

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Also present:

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FEDERAL STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties, that the presence of the Referee be waived;

IT IS FURTHER STIPULATED AND AGREED that the witness shall read and sign the minutes of the transcript within 30 days upon receipt, and that the filing of the transcript be waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form, are reserved until the time of trial;

IT IS FURTHER STIPULATED AND AGREED that this Deposition may be utilized for all purposes as provided by the Federal Rules of Civil Procedure;

AND FURTHER STIPULATED AND AGREED that all rights provided to all parties by the Federal Rules of Civil Procedure shall not be deemed waived and the appropriate sections of the Federal Rules of Civil Procedure shall be controlling with respect thereto.

1 THE REPORTER: For the transcript order,  
2 is it --

3 MR. RICKNER: I'm ordering the copy.

4 THE REPORTER: The original?

5 MR. RICKNER: Yeah. That will be 14 Wall  
6 Street, Suite 1603, New York, New York 10005.  
7 Rickner, PLLC.

8 THE REPORTER: And then for the copies,  
9 is it provided or do they pay for their own?

10 MR. RICKNER: I don't know what -- if  
11 we've have an agreement otherwise. If we've  
12 agreed to it in the past, we'll do it. If we  
13 haven't, we won't.

14 MR. JULIAN: The usual custom and  
15 practice is to read and provide, but I'm not  
16 going to have an argument.

17 MR. RICKNER: Whatever it is that we've  
18 agreed on, I'll check in with Josh and stuff.  
19 I just don't have it committed to memory  
20 today.

21 MR. JULIAN: Yeah, that's fine.

22 THE REPORTER: So do you want to --

23 MR. RICKNER: Put a pin in it. I'll take  
24 the original, and if there's more to come,  
25 we'll order more.

1 W I L L I A M F I T Z P A T R I C K, having been called  
2 as a witness, being duly sworn, testified as follows:

3

4 MR. JULIAN: I just want to, for the  
5 record, read and sign, and all objections  
6 except as to form are reserved.

7 MR. RICKNER: Sure.

8

9 EXAMINATION

10 BY MR. RICKNER:

11 Q. Mr. Fitzpatrick, nice to meet you. My name is  
12 Rob Rickner. I'm going to be asking you a few questions  
13 today.

14 A. Sure. Nice to meet you.

15 Q. Nice to meet you. Have you ever had your  
16 deposition taken before.

17 A. Yes.

18 Q. Okay. How many times?

19 A. Oh, less than ten, more than five, somewhere  
20 in the neighborhood.

21 Q. Okay. In the five to ten times that you've  
22 had your deposition taken, did any of those involve cases  
23 where either you were the prosecutor or whether you were  
24 involved in the prosecution?

25 A. I think they've all been.

1 Q. All five or ten?

2 A. Yeah.

3 Q. Okay. And about what years did that cover?

4 A. Well --

5 Q. The dates of the depositions, not the dates of  
6 the prosecutions, to be clear.

7 A. Oh. The most recent one involved an  
8 investigation by the County probably four years ago, and  
9 the first one would have been mid '90s.

10 Q. Were you represented by Mr. Julian in any of  
11 those cases?

12 A. No.

13 Q. Do you have copies of the transcripts for any  
14 of those depositions?

15 A. Personally, no.

16 Q. Okay. Who represented you in those cases?

17 A. The first one was Attorney Ed Menkin, and the  
18 last one I appeared without counsel.

19 Q. For the one that you appeared without counsel,  
20 do you believe that you might have a copy of the  
21 deposition in your e-mail or something?

22 A. No.

23 Q. Who was the -- for the most recent one, who  
24 was the plaintiff and defense attorneys?

25 A. It was a complaint from a former deputy chief



1 of police, Sean Broton, who is now suing me, and he's  
2 represented by Gary Lavine, but I have not been deposed  
3 in that case as of yet.

4 Q. Oh, okay. I'm just talking about the cases  
5 where you've been deposed. You mentioned one in the '90s  
6 where you were represented by Ed Menkin?

7 A. Right.

8 Q. Who was the plaintiff's attorney in that case?

9 A. I couldn't remember. I can picture her, but I  
10 can't remember her name.

11 Q. Okay. Who was the plaintiff?

12 A. Sig Menchel, former medical examiner.

13 Q. Gotcha. Okay. And was the deposition in the  
14 Menchel case the first time that you had your deposition  
15 taken?

16 A. I think so, Rob. I mean, it was a long time  
17 ago. I think so.

18 Q. I understand that. What was the next time  
19 after that?

20 A. I honestly don't remember.

21 Q. Well, between the one where you haven't had  
22 your deposition taken yet and the one in the '90s, which  
23 other ones do you remember?

24 A. I don't know. I've been sued a lot. I don't  
25 really remember them. I shouldn't say a lot. You know,

1 a dozen times. There was a guy, a rape of a --  
2 eventually pled guilty to sexual abuse of a child. That  
3 was not the second one. And I testified in court, but I  
4 know that's not a deposition, but --

5 Q. We'll get to that.

6 A. Yeah. So I just don't remember.

7 Q. In any of the five to ten depositions that you  
8 mentioned, was the subject of the case something like a  
9 wrongful or malicious prosecution?

10 A. In the sex offender's case, yes. Menchel was  
11 not. There was a guy who was a special prosecutor up  
12 north, his name was Nick Hillary, that was several years  
13 ago, I was deposed in that. He alleged a civil rights  
14 violation, malicious prosecution, et cetera. The case  
15 went to trial. Who else? Just not ringing a bell.

16 Q. So I'm going to take it from your prior  
17 experience with depositions that you're familiar with the  
18 overall ground rules in a deposition, but I'm just going  
19 to go over them for the record.

20 A. Sure.

21 Q. You understand that you have to answer  
22 verbally. Nods of the head aren't necessarily going to  
23 be captured in the record, so you have to describe things  
24 with words. Will you do that?

25 A. Yes.



1 Q. Okay. You're testifying in a conference room,  
2 but it's the same rules as though you were in court. I  
3 mean, you have to tell the truth, the whole truth, and  
4 nothing but the truth. Can you do that for me?

5 A. Yes.

6 Q. Now, you may want to take a break, and that's  
7 fine. However, if there's a question pending, you have  
8 to answer the question before you take a break. Do you  
9 understand?

10 A. Sure.

11 Q. I ask these long rambling questions, and you  
12 may have exactly an idea of where I'm going to go and  
13 when I'm going to stop asking the question, but can you  
14 make sure and wait until I'm finished with the question  
15 before jumping in with the answer?

16 A. Yes.

17 Q. Thanks very much. And this is standard, I  
18 have to ask it for everyone: Do you have any physical or  
19 medical reason you couldn't give full and complete  
20 testimony today besides the ordinary passage of time?

21 A. No.

22 Q. Did you prepare for this deposition?

23 A. Sure.

24 Q. Okay. Without going into the substance of the  
25 conversations, did you talk to your lawyer?

1 A. Yes.

2 Q. And are you represented by Mr. Julian today?

3 A. I am.

4 Q. Are you represented by anybody else in this  
5 matter?

6 A. No.

7 Q. And how many times did you meet with  
8 Mr. Julian?

9 A. When was the lawsuit filed?

10 Q. I'm just talking about with respect to  
11 preparation for this deposition?

12 A. Oh. I think we met twice.

13 MR. JULIAN: Isn't this attorney/client?

14 I object. I'll allow him to answer, but --

15 MR. RICKNER: The substance of the  
16 conversation --

17 MR. JULIAN: -- I'm not waiving the  
18 attorney/client --

19 THE WITNESS: I think --

20 MR. JULIAN: Let me finish, Bill.

21 THE WITNESS: Sorry.

22 MR. JULIAN: I'm not waiving the  
23 attorney/client privilege, but in the interest  
24 of expedition, I'm allowing --

25 MR. RICKNER: I don't want the subject.

1 I just want to know how much time.

2 MR. JULIAN: I don't think you're  
3 entitled to that, but I will object. I will  
4 allow him to answer.

5 A. I think it was twice.

6 Q. Okay. And how many hours total?

7 A. Total?

8 Q. Yeah.

9 A. Three to four.

10 Q. Okay. In the course of your preparation for  
11 this deposition, did you review any documents?

12 A. Yes.

13 Q. Okay. Did any of those documents help refresh  
14 your recollection, meaning that there are things that you  
15 just couldn't have remembered before that you remembered  
16 after you read the document?

17 A. Some.

18 Q. Okay. Which documents specifically refreshed  
19 your recollection?

20 A. There was a newspaper article about a press  
21 conference that Dr. Mitchell held in early March of '93  
22 that I did not remember, I actually still don't remember  
23 it, but the newspaper article, I'm assuming, was accurate  
24 and indicated I was there, didn't quote me as saying  
25 anything. That's about it.

1 Q. Did you listen to any recordings?

2 A. Yes. There was a -- yes.

3 Q. Did you listen to a thirty-six-minute  
4 recording of statements you provided to the county  
5 attorney in April of 1993?

6 A. No.

7 MR. RICKNER: Is the time the issue  
8 you're having, Mr. Julian?

9 Q. You may not remember when you gave the  
10 statement, but did you give a statement to the county  
11 attorney that was recorded that you listened to?

12 A. No. It was to the county legislature.

13 Q. To the county legislature?

14 A. That's what I was told. I could hear people  
15 answering -- there were multiple people asking me  
16 questions.

17 Q. All right. Do you know what year that  
18 statement was provided?

19 A. When I physically --

20 Q. The recorded --

21 A. -- gave the statement?

22 Q. Yeah, the recorded statement.

23 A. I was told it was '93. I don't remember it.

24 Q. Okay.

25 A. But it was clearly my voice.

1 Q. So it's about a half an hour long, and you  
2 were discussing --

3 A. I'm --

4 Q. -- Dr. Mitchell?

5 A. I'm sorry. I broke your rule I interrupted  
6 you. I only listened to about five minutes of it.  
7 That's what Mr. Julian played for me.

8 Q. Okay.

9 MR. JULIAN: For the record, we have a  
10 problem with the tape in terms of rewinding  
11 it, which -- so I didn't want to degrade it in  
12 any way.

13 MR. RICKNER: Oh. Well, I have a  
14 courtesy copy of the recording for you --

15 MR. JULIAN: Thank you.

16 MR. RICKNER: -- for the future. We'll  
17 get into that recording afterwards.

18 BY MR. RICKNER:

19 Q. Besides the document you mentioned to refresh  
20 your recollection, the other documents you reviewed in  
21 the recording, was there anything else that you reviewed  
22 to prepare for your deposition?

23 A. Yes.

24 Q. Okay. What else did you review?

25 A. There was a 440 hearing from a number of years



1 ago in front of Judge Brunetti. I read my testimony in  
2 that. I looked at some grand jury testimony from  
3 Dr. Mitchell, part of my summation in the Rivas trial,  
4 medical examiner documents from the original case, and  
5 those are the things that stand out in my mind right now.

6 Q. Okay. Now, just a bit of background. We'll  
7 sort of jump ahead. When did you graduate law school?

8 A. '76.

9 Q. Did you go straight to law school after  
10 college?

11 A. Yes.

12 Q. Okay. What's your college degree in?

13 A. Political Science.

14 Q. Did any of your formal studies involve  
15 forensics?

16 A. We had -- I took a course in law and  
17 psychiatry, which is technically forensics. There was a  
18 standard evidence course, but I don't think they were  
19 teaching, quote/unquote, forensics at SU in the mid '70s.

20 Q. Fair enough. And after you graduated law  
21 school, that is, in 1976, where did you first practice?

22 A. I practiced as an assistant DA right here in  
23 Onondaga County.

24 Q. Okay. Did you pass the bar the first time?

25 A. Yes.

1 Q. And how long -- I understand there's been some  
2 movement, but for that phase, how long were you an  
3 assistant district attorney?

4 A. Until December 31st, 1986.

5 Q. Okay. And after December 31st, 1986, did you  
6 go into private practice?

7 A. I did.

8 Q. And did you practice at a specific firm?

9 A. I shared space with Tisdell, Moore and Walter  
10 and had a fee-split arrangement with them, but  
11 essentially I was on my own.

12 Q. Were you of counsel to the firm?

13 A. No.

14 Q. And what area did you practice in?

15 A. Primarily criminal defense work.

16 Q. Now, obviously at some point you became the  
17 district attorney for Onondaga County?

18 A. Correct.

19 Q. Okay. And I believe you started in January of  
20 1992?

21 A. That's correct.

22 Q. Okay. And would it be correct to say that you  
23 would have been elected a couple of months earlier?

24 A. November of '91.

25 Q. Okay. Now, between December 31st, 1986 and

1 January of 1992, were you in private practice with  
2 yourself, essentially, for that entire period of time?

3 A. Yes.

4 Q. Okay. And did you get elected the first time  
5 you ran for district attorney?

6 A. Yes.

7 Q. When you were campaigning to be district  
8 attorney for the first time, was one of your campaign  
9 issues cold cases?

10 A. I really didn't have a lot of campaign issues.  
11 I ran a host.

12 Q. Okay. So after you began as district  
13 attorney, did you have an agenda where there were parts  
14 of the office that you wanted to reform?

15 A. Oh, sure.

16 Q. Okay. What was that agenda?

17 A. That's a very difficult question to answer in  
18 a short period of time. The agenda -- the office wasn't  
19 being run properly. There was not vertical prosecution.  
20 There was not specialized bureaus. There was not  
21 specialized training for those bureaus. I didn't think  
22 the staff was properly paid. I went to the legislature  
23 and asked for an increase in pay. I attracted, I think,  
24 some high-quality people to run the various bureaus,  
25 including people from academia. I just wanted the office



1 to be run better in many, many more ways. I could go on,  
2 or does that satisfy --

3 Q. No. No. That's very helpful. But I'm sort  
4 of focusing on cold cases.

5 A. Sure.

6 Q. Going back to when you first started as  
7 district attorney, did you believe that there was a  
8 backup in cold cases, meaning either unsolved murders or  
9 murders that hadn't been properly prosecuted?

10 A. Well, that's a multifaceted question. I  
11 wouldn't call it a backup. I thought there were some  
12 cases that needed to be looked at more diligently, I  
13 think is the best way to answer that.

14 Q. Okay. Was the Valerie Hill murder one of  
15 those cases?

16 A. No.

17 Q. Okay.

18 A. Not in my mind. Obviously, it was brought to  
19 my attention.

20 Q. Okay. I'm actually going to get into exactly  
21 that process. So obviously, you remember the Valerie  
22 Hill murder and the prosecution of Hector Rivas, right?

23 A. Yes.

24 Q. Okay. Now, prior to when you became district  
25 attorney in January of 1992, had you ever heard of the

1 Valerie Hill murder?

2 A. I don't -- as I'm sitting here right now, I  
3 don't remember. Being a person that followed the news,  
4 I'm quite certain that in 1987 I would have read the  
5 paper and discovered that she had been murdered.

6 Q. Okay. Besides perhaps seeing it in the  
7 news --

8 A. Right.

9 Q. -- did you have any information from your work  
10 in law enforcement or something else regarding the murder  
11 of Valerie Hill prior to becoming the DA?

12 A. No.

13 Q. How is it that -- now, between -- Valerie Hill  
14 was murdered in 1987, correct?

15 A. Right.

16 Q. Between 1987 and 1992, do you know what steps  
17 were taken to prosecute anyone for that murder?

18 A. Do I know now --

19 Q. Yeah.

20 A. -- or did I know then?

21 Q. Well, either way.

22 A. Did I know then? Absolutely not. Do I know  
23 now? Yes.

24 Q. Okay. Well, what steps had been taken before  
25 your involvement in this case to prosecute somebody for

1 the murder of Valerie Hill?

2 A. The scene was examined, forensic evidence was  
3 attempted to be collected, witnesses were interviewed,  
4 including Mr. Rivas, photographs were taken, autopsy was  
5 done. And then I think essentially it went into the  
6 status of a cold case.

7 Q. Okay. The steps you just described, would it  
8 be fair to say that those were actions taken by the  
9 police department and the medical examiners rather than  
10 the prosecutor's office?

11 A. Yes.

12 Q. Okay. Do you know why the prosecutor's office  
13 didn't go forward with the prosecution either of Hector  
14 Rivas or somebody else?

15 A. I do not.

16 Q. Okay. At some point, the Valerie Hill murder  
17 file came to your attention in 1992; is that fair?

18 A. That's fair.

19 Q. Okay. How did that happen?

20 A. The person who was serving as my chief  
21 investigator was a former detective -- or he actually was  
22 still a current detective. He was on loan to me as my  
23 chief investigator. His name is Peter Tynan, T-Y-N-A-N,  
24 and he brought the file to my attention as worthy of  
25 being further investigated.

1 Q. Okay. When you say he brought the file to  
2 your attention, did he actually bring you the  
3 investigation file?

4 A. At some point, yes.

5 Q. Okay. And after receiving the file, what did  
6 you do?

7 A. Well, I reviewed it, I felt that it clearly  
8 warranted further investigation, and I took steps to  
9 further investigate the murder of Valerie Hill.

10 Q. Okay. Now, when you say you took steps to  
11 further investigate, was that actually performed by, I  
12 guess, Officer or Detective Tynan, or were you personally  
13 involved?

14 A. Well, I was supervising it, but the physical  
15 acts, witnesses, collection of photographs, were done  
16 mostly by Investigator Tynan.

17 Q. Okay.

18 A. And I'm sure others were involved, as well.

19 Q. Now, with respect to the -- this  
20 reinvestigation, did Investigator Tynan speak to any  
21 witnesses?

22 A. Yes.

23 Q. Okay. Did you speak to any witnesses?

24 A. Yes.

25 Q. Was there anybody else in the office who was

1 involved with talking to witnesses besides you and  
2 Investigator Tynan?

3 A. Not that I recall.

4 Q. Okay. Just going for you, do you remember  
5 which witnesses you spoke to?

6 A. No. I do remember a John Cassano, who was a  
7 store clerk at Liquor Square. I remember a Susan  
8 Stonecipher. I remember another woman, too, just by  
9 coincidence, I just leased my car from her, I can't  
10 remember her name, but she worked for a car company back  
11 in '87. I remember speaking to Joseph Fields. And I  
12 remember speaking to Investigator John Brennan,  
13 Investigator Tom Stassi, and anybody that testified at  
14 trial I would have interviewed beforehand, prepared them  
15 for trial or grand jury. But those are the people that I  
16 can picture in my mind.

17 Q. During the course of these interviews, did you  
18 take any notes?

19 A. I normally don't take notes, but I certainly  
20 may have.

21 Q. Did you prepare any reports?

22 A. No.

23 Q. Do you know if Investigator Tynan took any  
24 notes while he was interviewing witnesses?

25 A. If he did, they would be in the file. I



1 don't, as I sit here today, recall him saying to me  
2 here's notes I took of so-and-so's interview.

3 Q. Did he create a report related to his  
4 reinvestigation?

5 A. You're now talking about a report in '87 in  
6 connection with the homicide. I don't know if he was  
7 assigned to the case in '87 or not.

8 Q. I'm fairly sure he wasn't. But no. No. I'm  
9 talking about in 1992 during what I'm calling the  
10 reinvestigation--

11 A. Why are you fairly sure he wasn't? He was a  
12 homicide detective in '87. I don't know.

13 Q. Well, I've looked at all the paperwork and his  
14 name's not come up.

15 A. Excuse me. Okay. Fair enough.

16 Q. All of that aside --

17 A. All of that aside, did he do a report  
18 in -- no. He would have verbally reported to me where we  
19 stood on the investigation. I don't recall him  
20 generating a police report.

21 Q. Okay. In 1992 did you talk to Erik Mitchell  
22 with respect to his autopsy and his investigation of the  
23 body?

24 A. Yes.

25 Q. Okay. About when was that?

1           A.     It would have been before he testified in  
2 front of the grand jury, which would have been November  
3 of '92.

4           Q.     So do you believe that he -- the first time  
5 that you spoke to him would have been in November of 1992  
6 or is it sometime before that?

7           A.     It would have been November of '92 or October  
8 of '92.

9           Q.     Do you know if Investigator Tynan spoke to him  
10 before then?

11          A.     I do not know.

12          Q.     Okay.

13          A.     He may have been present when I spoke to him,  
14 but I don't recall.

15          Q.     Understood. Now, during the investigation,  
16 did you learn that Hector Rivas claimed to have an alibi?

17          A.     Yes.

18          Q.     Okay. I'm going to actually -- I guess we  
19 should just mark this as Exhibit 1. This is purely for  
20 convenience, since I don't remember what day was what in  
21 March of 19 --

22          A.     March 27th was a Friday.

23          Q.     Not bad. Let's just pass one to your counsel.

24                     (Exhibit 1 marked for identification.)

25

1 BY MR. RICKNER:

2 Q. Just Exhibit 1 for your reference, do you  
3 think this accurately represents which days fell on which  
4 days of the week in March of 1987?

5 A. Yes, it does.

6 Q. Okay. Now, Mr. Rivas claimed to have an  
7 alibi. What days did he claim to have an alibi for?

8 A. Well, when you say he claimed to have an  
9 alibi, those were not his words, obviously. He was  
10 interviewed about his whereabouts from the last time  
11 Valerie was seen alive, which was Friday night, up until  
12 the discovery of her body, and he gave a recitation of  
13 where he was. Friday he said that he on two occasions  
14 during the day made efforts to contact Valerie, made no  
15 effort to contact her that night. He spent some time  
16 with friends. He wound up at Coleman's bar. He --

17 Q. When is this that he ended up at Coleman's  
18 bar?

19 A. The 27th, Friday.

20 Q. Okay.

21 A. He left Coleman's-- this is his version. He  
22 left Coleman's at 9:30 and went directly to Albert's bar  
23 in Cazenovia. And I would say parenthetically that's  
24 completely false. He went home to bed alone. On  
25 Saturday, he appeared at a party, spoke to a number of



1 Valerie's friends at the party, related to them that she  
2 was not feeling well and that's why she wasn't at the  
3 party. Witnesses also recall that he was talking about  
4 Valerie in the past tense. Again, he went home that  
5 night and retired for the evening. And then I do not  
6 recall his version of his activities on Sunday. And  
7 Monday, he was at home when the police came and  
8 questioned him.

9 MR. RICKNER: I'm just going to mark this  
10 as Exhibit 2, please, one to be marked and one  
11 for your counsel.

12 (Exhibit 2 marked for identification.)

13 BY MR. RICKNER:

14 Q. If you can just turn to Page 126. And just  
15 for the record, this is an excerpt of Erik Mitchell's  
16 grand jury testimony -- well, it's all of his grand jury  
17 testimony and excerpts of the total grand jury testimony.

18 A. Got it.

19 Q. And looking at Line 20, and the answer, which  
20 goes to Line 6 on Page 127, you're asking Dr. Mitchell if  
21 the death could have occurred on March the 27th?

22 A. Correct.

23 Q. That being the Friday, right?

24 A. Correct.

25 Q. Why did you ask him that?

1           A.     Because the circumstantial evidence  
2     overwhelmingly pointed to Valerie being dead late Friday,  
3     early Saturday morning.

4           Q.     Okay. And would it have been correct to say  
5     that if she had died, let's say, late Saturday or into  
6     Sunday, that would have conflicted with the  
7     circumstantial evidence that you had?

8           A.     It would have been inconsistent with my theory  
9     of the prosecution, but it would have been something that  
10    I would have had have to overcome somehow and account for  
11    his whereabouts.

12          Q.     Now, how did you come to the theory that he  
13    was killed on the -- withdrawn. It's usually he in my  
14    cases.

15                 How did you come to the theory that she was  
16    killed either late in the evening on March 27th or in the  
17    early hours of Saturday the 28th?

18          A.     I'll go through a couple things. Number one,  
19    this was a very, very -- a very, very good person, a very  
20    loving person, a very professional person. She was a  
21    nurse. She loved her family. And she was very, very  
22    conscientious. So with that in mind, Saturday she was to  
23    travel to Saratoga Springs to see a friend by the name of  
24    Laura Adams. She not only failed to appear, she never  
25    once communicated to Laura that she wasn't coming. Laura

1 Adams made numerous efforts to contact Valerie during the  
2 weekend beginning Saturday and was unsuccessful.

3 There were no phone calls made from her house  
4 Saturday or Sunday. No one saw her Saturday or Sunday  
5 until her body was found on Monday. Her car, which was  
6 in her driveway, had not been moved from Friday night  
7 onward. She had a cat that she was very, very connected  
8 to. A neighbor found the cat roaming around outside of  
9 Valerie's apartment on Saturday morning.

10 Those things, to me, indicate overwhelmingly  
11 that she ceased to exist late Friday, early Saturday.

12 Q. When you say early Saturday, do you mean,  
13 like, before 6:00 a.m. or do you mean before noon?

14 A. I would say more towards 6:00 a.m. I'm  
15 talking early morning hours, 12:00, 1 o'clock.

16 Q. Okay. And just for clarity, would it be  
17 correct to say that if the medical examiner had  
18 determined that she had died late in the evening on  
19 Saturday or sometime on Sunday, that would have  
20 conflicted with your theory of the case?

21 A. Okay. If I can -- with all due respect, the  
22 question -- medical examiners do not determine a specific  
23 time of death unless the death is witnessed or  
24 videotaped. I can tell you when John Kennedy died  
25 because I've seen the Zapruder film. No medical examiner

1 is going to say with certainty that Valerie Hill died  
2 Saturday night.

3 Q. Right.

4 A. If Dr. Mitchell, during my interview with him,  
5 had said -- and answered my question differently and  
6 said, no, it's not possible that she was killed Friday  
7 night or Saturday morning, I would have had to have  
8 recalibrated it and reinvestigated the case to determine  
9 how it is that Hector Rivas killed her on Saturday or  
10 Sunday or someone else had killed her on Saturday or  
11 Sunday.

12 Q. Okay. And I think I understand your point.  
13 If the medical examiner had told you that the physical  
14 evidence was inconsistent with a death on Friday or the  
15 early morning hours of Saturday, that would have  
16 conflicted with your theory of the case?

17 A. That's true.

18 Q. Okay. Now, when is the first time that you  
19 learned that the medical evidence would have been  
20 consistent with your theory of the case that she had died  
21 on the 27th or early on the 28th?

22 A. I don't remember specifically, but I'm sure it  
23 would have been in a conversation with Erik Mitchell in  
24 preparation for his grand jury testimony.

25 Q. Okay. Would you have gone forward with the



1 indictment without that information?

2 A. If Dr. Mitchell had said it's not possible she  
3 died Friday night?

4 Q. Correct.

5 A. Would I have gone -- I would not have gone  
6 forward that day. I would have continued to investigate  
7 the case.

8 Q. Okay. And during your investigation, you  
9 could have uncovered someone else excluded Hector Rivas  
10 or any number of possibilities; is that right?

11 MR. JULIAN: Object to the form of the  
12 question.

13 A. Anything is possible.

14 Q. Okay. Now, during your reinvestigation, at  
15 any point did you learn that at least Dr. Mitchell's  
16 initial impressions were that she had died later on the  
17 28th or the 29th?

18 A. No.

19 Q. During your reinvestigation prior to this  
20 discussion with Dr. Mitchell, did you have any  
21 information with respect to what the medical evidence  
22 suggested regarding her death?

23 A. Sure. Yeah.

24 Q. At the time of her death?

25 A. Yes.

1 Q. Okay. What was that?

2 A. There was a handwritten note by Dr. Mitchell  
3 in his initial findings that indicated the death had  
4 occurred two to three days prior to her discovery. So  
5 discovery being Monday at 1:00 p.m., that would have  
6 placed the time of death anywhere from Friday to Monday.

7 Q. You said it's a handwritten note?

8 A. Yes. I -- yes, I believe so.

9 Q. Now, I'd like to mark this as Exhibit 3. This  
10 is a FOIL response from March 24th, 1998 from the  
11 Onondaga County Health Department Office of the Medical  
12 Examiner, enclosing an autopsy report, a final  
13 toxicology, microscopic report, and several things listed  
14 as other.

15 MR. RICKNER: One copy to Mark, one copy  
16 for your attorney.

17 (Exhibit 3 marked for identification.)

18 BY MR. RICKNER:

19 Q. And I'd just like to walk you through. This  
20 is a collection of documents. If you go to the first  
21 document, which is six pages typed, and at the bottom  
22 signed by Dr. Mitchell?

23 A. Yes, I have that.

24 Q. Okay. Now, take your time if you need to, but  
25 just going through these six pages, is there anything

1 about the time of death?

2 A. No. There are clues to the time of death, but  
3 there's nothing in there -- I've never seen an autopsy  
4 report from Dr. Mitchell that includes the time of death.

5 Q. Okay. So just to be clear, it was not  
6 Dr. Mitchell's practice to include the time of death in  
7 his autopsy report?

8 A. None that I saw.

9 Q. Okay. Now, going to the next page, which is  
10 the report of toxicol -- toxicological screens. Excuse  
11 me.

12 A. Easy for you to say.

13 Q. No, not really. They found alcohol in her  
14 blood, and it looks like this was handled by a  
15 toxicologist. Now, can you read the signature at the  
16 bottom?

17 A. Chip Walls.

18 Q. Could you spell that for the record, please?

19 A. Common spelling, W-A-L-L-S.

20 Q. Oh, okay. Now, going to the next page, it  
21 says: Gross description of brain after fixation;  
22 diagnosis, normal brain with postmortem decomposition,  
23 signed by George Collins, MD --

24 A. Yes.

25 Q. -- do you see that?

1 A. Yes, I do.

2 Q. Who was George Collins, MD in 1992?

3 A. I don't believe I've ever met him, but I

4 believe he worked at one of the local hospitals.

5 Q. Okay. So just to be clear, you don't believe

6 that he worked at the Office of the Medical Examiner for

7 Onondaga County?

8 A. I can tell you he does not.

9 Q. Okay.

10 A. I believe -- no, I do not know where he

11 worked, but I believe he was an expert in the brain.

12 Q. Okay. Now, as part of your reinvestigation,

13 did you ever speak to Dr. Collins?

14 A. I don't recall speaking to Dr. Collins, but I

15 may have.

16 Q. Okay.

17 A. I just do not recall. I apologize.

18 Q. Do you know if anyone else did?

19 A. Yes, Dr. Mitchell spoke to him.

20 Q. Okay. You believe that Dr. Mitchell spoke to

21 Dr. Collins?

22 A. I believe he did.

23 Q. And to be clear, do you believe that happened

24 in 1992 or back in '87?

25 A. I do not know.



1 Q. Okay. And what's the basis for your belief?  
2 I mean, did Dr. Mitchell tell you this?

3 A. No. Just his trial testimony.

4 Q. Okay.

5 A. Dr. Mitchell's trial testimony.

6 Q. Understood. Now, can you please move to the  
7 next page? It doesn't really have a title except for  
8 maybe Report of Death/Investigation and it bears the  
9 numbers in the top right-hand corner 870208?

10 A. Yes.

11 Q. Do you recognize the handwriting?

12 A. No, I do not.

13 Q. Okay. Moving to the next page, which seems to  
14 be the same document. At the top right, it says: Found  
15 dead by, and then handwritten father and brother. At the  
16 bottom is an M. Birchmeyer. Do you see that?

17 A. Yes.

18 Q. Okay. Do you know who M. Birchmeyer is?

19 A. Yes.

20 Q. Who is he?

21 A. Michael Birchmeyer.

22 Q. Okay. And what was Michael's Birchmeyer's  
23 role in 1992?

24 A. I believe he was a medical examiner's  
25 investigator.

1 Q. Who did he work for?

2 A. Medical -- Dr. Mitchell.

3 Q. Okay. And moving to the next page, it says  
4 Notification of Death, and there's a signature at the  
5 bottom right. Do you know whose signature that is?

6 A. It doesn't ring a bell.

7 Q. Okay.

8 A. I can't read it.

9 Q. Okay. Moving to the next page is a Case  
10 Information Sheet with the time 8:53 a.m. on March 31st,  
11 1987 handwritten. Do you recognize the signature, the  
12 two signatures, at the bottom?

13 A. You mean these scribbled initials here, is  
14 that what you're referring to?

15 Q. It looks like a signature. It looks like  
16 scribbled initials. I'm wondering if you know who they  
17 belong to?

18 A. It doesn't ring a bell, no.

19 Q. That's fine. Now, moving to the next page,  
20 it's another case information sheet. This appears to be  
21 from 3:29 p.m. on March 31st, 1987. It says: Per  
22 Dr. EKM, and then there's a signature?

23 A. Yes.

24 Q. Do you know whose signature that is?

25 A. No.

1 Q. It's fair to say this isn't Dr. -- EKM is  
2 Dr. Mitchell's initials, right?

3 A. That's correct.

4 Q. Now, moving to the next page, another case  
5 information sheet, this is for 1:00 p.m. on March 31st,  
6 1987, and it has the signature for UBS or WBS?

7 A. Yes.

8 Q. Do you know who that might be?

9 A. William Sullivan.

10 Q. Okay. Who is William Sullivan?

11 A. He was an investigator for Dr. Mitchell.

12 Q. Okay. And his note says that Sergeant Lynch  
13 states that subject last seen at 8:30 a.m. on Saturday?

14 A. Correct.

15 Q. Okay. Do you know Sergeant Lynch's first  
16 name?

17 A. No.

18 Q. Okay. Could we agree that if the subject  
19 Valerie Hill was seen at 8:30 a.m. on Saturday, that  
20 means she died sometime after?

21 A. That is a mistake in that report. That came  
22 from a Ms. Stonecipher who confused her dates. She  
23 thought it was Saturday morning.

24 Q. Okay.

25 A. It turned out it was Friday morning.

1 Q. Okay. So we'll get to that in a second. But  
2 it's your understanding that Sergeant Lynch received  
3 inaccurate information from Ms. Stonecipher?

4 A. Correct.

5 Q. Okay. And that's what resulted in this  
6 report?

7 A. Correct.

8 Q. Okay. The next one, it's 4:55 p.m. on, it  
9 looks like, April 1st, 1987. That's the same Sullivan's  
10 signature; is that right?

11 A. Yes, sir.

12 Q. And moving to the next case information sheet,  
13 9:30 a.m. on April 2nd, that's also Investigator  
14 Sullivan?

15 A. Correct.

16 Q. Can you read the name right below Decedent,  
17 Valerie Hill?

18 A. That's Larry Bonanni.

19 Q. Who is Larry Bonanni?

20 A. He was a Syracuse cop.

21 Q. Okay. And do you know what role he had in the  
22 investigation?

23 A. I do not.

24 Q. Do you know what the two Brandy Alexanders,  
25 one piece of garlic bread information came from?

1 A. I don't recall.

2 Q. It's fair to say Brandy Alexander is an  
3 alcoholic drink?

4 A. Yes.

5 Q. Okay.

6 MR. JULIAN: So stipulated.

7 Q. Do you have a recipe? Hold on. I think it's  
8 on the next page. Going on to the next case information  
9 sheet, this is 11:10 a.m. on April 2nd, 1987, and it  
10 appears to have information about a Brandy Alexander  
11 recipe. Do you know whose handwriting this is?

12 A. No, I don't.

13 Q. Okay. Moving on to the next one, this is  
14 April 30th, 1987. It appears to have at least a partial  
15 signature at the bottom. Do you know who that might be?

16 A. No.

17 (Brief interruption.)

18 MR. RICKNER: Sidney is here. I need to  
19 talk to my client.

20 BY MR. RICKNER:

21 Q. I'm sorry. I didn't --

22 A. I apologize, Counselor. I do not know who  
23 that scribble mark was written by.

24 Q. Okay. Tim Finney, do you see that at the top  
25 left?



1 A. I do.

2 Q. Who is that?

3 A. He's a Syracuse cop.

4 Q. Okay. And spoke to, it says -- is that  
5 Randall Finney?

6 A. I think there's a comma missing. Spoke to  
7 Randall would have been Randall Hill, Valerie's father,  
8 and then I don't know what he's trying to say there. It  
9 says V. Hill had only -- my recollection of this is this  
10 is a recitation of what Randall Hill believed she had  
11 consumed at the Friday night dinner.

12 Q. And just to be clear, based on your  
13 investigation, the last time that you believe she was  
14 seen alive was a Friday night dinner with her family?

15 A. With her father, just her father. Her  
16 mother -- her stepmother, excuse me, was dying at Upstate  
17 Medical Center.

18 And when I answered your question earlier, you  
19 just refreshed my memory that in addition to the facts  
20 which I outlined regarding why circumstantially she died  
21 Friday night, she had been in constant contact with her  
22 father regarding her stepmother's status, and obviously,  
23 Saturday and Sunday she made no effort to check on her  
24 status.

25 Q. Got it. Now, moving on to this next case

1 information file, at this point we have no dates or  
2 signature. I can read brother David Hill called him. Do  
3 you know whose handwriting this is?

4 A. I do not.

5 Q. Okay. And the next page, it says Scene  
6 Investigation. Just for the record, this is the type-up  
7 of the investigation Erik Mitchell performed at the scene  
8 itself?

9 A. Yes.

10 Q. Okay. Now, going on to the next page, which  
11 is sort of a standard autopsy diagram of the front and  
12 back of a generic human --

13 A. Right.

14 Q. -- with some notes on it. Do you know whose  
15 handwriting any of this is?

16 A. I don't recognize the handwriting.

17 Q. Just looking at, for example, the lines that  
18 go to the fingers?

19 A. Right.

20 Q. In sort of the middle part of the page, do you  
21 recognize that handwriting?

22 A. I don't.

23 Q. Going to the next page, this seems to be a  
24 partially filled out document, it's dated 5:30 p.m. Do  
25 you recognize any of the handwriting on this page?

1 A. No.

2 Q. Going to the next page, do you recognize any  
3 of the handwriting on this one? It doesn't have a title.  
4 It appears to have been cutoff, but I see, for example,  
5 Specimen Description and Submit, and a case number  
6 87-0208, name Valerie Hill.

7 A. Right.

8 Q. Do you recognize any of the handwriting on  
9 this?

10 A. I do not.

11 Q. Okay.

12 A. It refreshes my memory, though, that I was  
13 incorrect earlier when I said two to three days was  
14 handwritten. It was not. It was typed.

15 Q. Okay. And it says Delivered By, do you see  
16 this person?

17 A. Yeah. William Welch. The name rings a bell,  
18 and I just can't remember who he is.

19 Q. Okay. So going back for a moment, would it be  
20 correct to say that this statement, "was there approx.  
21 two to three days," prior to talking to Dr. Mitchell in  
22 preparation -- withdrawn.

23 Would it be correct to say that this  
24 statement, "was there approximately two to three days,"  
25 was the only information you had regarding the medical

1 evidence of when Valerie Hill died prior to the first  
2 time you spoke to Dr. Mitchell about it?

3 MR. JULIAN: Object to the form of the  
4 question.

5 MR. VENTRONE: Yeah, object to the form.

6 A. Strictly anatomical, correct, medical --

7 Q. Yes.

8 A. Yeah. I don't remember. I don't remember  
9 anything coming to my attention. This was not a time of  
10 death case to me. I know that that's the thrust of your  
11 lawsuit, but this case to me was always going to be  
12 defended by reasonable doubt, he didn't do it, somebody  
13 else did it. And I probably spent three to five minutes  
14 with Erik Mitchell talking about time of death.

15 Q. Okay. So I'm just going to break this apart a  
16 little bit, since we did have an objection from counsel.  
17 So it's your -- withdrawn.

18 In 1992, when you were doing your  
19 reinvestigation, would it be correct to say you didn't  
20 consider this a time of death case, right?

21 A. I did not consider -- let me back up. In any  
22 case as a prosecutor, you want to anticipate a defense.  
23 My assessment of the case in anticipating the defense,  
24 the defense was going to be: I didn't do it, and you  
25 can't prove that I did it.



1           If the time of death became an issue, for  
2     example, if Mr. Calle had hired a tox -- excuse me -- a  
3     pathologist and began to focus on time of death, I would  
4     have paid more attention to it with Dr. Mitchell, but he  
5     didn't so I didn't.

6           It's obvious to me she was killed Friday  
7     night. Why in the name of God would a woman in her  
8     position, her status, her background, why would she not  
9     pick up a phone and call her father and ask how her  
10    stepmother was doing? Why she would not call this friend  
11    in Saratoga Springs and say I'm not coming. Why would  
12    she leave her cat outside? How did her car not move?  
13    What did she do all weekend?

14          Q.     Now, with respect to the medical evidence  
15    regarding time of death, excluding the circumstantial  
16    evidence that you just discussed --

17          A.     Right.

18          Q.     -- as you sit here today, does the statement,  
19    was there approximately two to three days before she was  
20    found that she died that's in this document, in  
21    Exhibit 3, is that the only medical information you had  
22    prior to talking to Dr. Mitchell?

23          A.     Well, I've got the autopsy report. There are  
24    clues in the autopsy report as to her time of death.  
25    Time of death is a multifaceted investigation, as I'm



1 sure you very well know. There are -- I have seen cases  
2 where two people died at the exact same time, and we can  
3 prove that, and they look completely different because of  
4 where they were stored in a particular house, because of  
5 the temperature, because of their own chemistry.

6 The human body reacts differently in  
7 everybody, the weight, the stress, the temperature in the  
8 room, so forth and so on. So there are clues, rigor  
9 mortis, livor mortis, aquafication of the eyes,  
10 putrefaction, in this case the deterioration of the  
11 brain. All of those things that I read I was aware of,  
12 and to me, not being a pathologist, they were consistent  
13 with me for her having been dead several days.

14 Q. Okay. Let's go back to page one of Exhibit 3.  
15 Now, the second paragraph, it says: The body has --

16 A. I think you're talking about page two.

17 Q. Oh. Page one of the autopsy report.

18 A. Autopsy report. Okay. Second paragraph.

19 Q. Yeah. It says: The body has fixed anterior  
20 livor with flattening of the nose secondary to pressure.  
21 There's a small amount of bloody fluid coming from the  
22 mouth and nose. Do you see that?

23 A. Yes.

24 Q. What does that tell you about the time of  
25 death?

1           A.     Livor mortis, only that it had to have -- that  
2     she had to have been dead for a period of time for livor  
3     to have been fixed.

4           Q.     Which takes how long?

5           A.     You're asking -- I'm not answering medical  
6     questions, with all due respect.

7           Q.     Okay. Well, just --

8           A.     I mean, it can take hours.

9           Q.     Well, we have hours.

10          A.     The only thing of relevance to me about the  
11     livor was that it was consistent with her position when  
12     she was found, i.e., she wasn't killed and then moved.

13          Q.     All right. Let's ask this a different way.  
14     Going through the six pages of this report from  
15     Dr. Mitchell, you read this report before you ever talked  
16     to Dr. Mitchell about this case; is that right?

17          A.     That's right.

18          Q.     Okay. Please list the parts in this report  
19     that you read and caused you to believe that she had died  
20     on Friday, the 27th?

21          A.     There's nothing in this report -- there's  
22     nothing anywhere that would convince me that she didn't  
23     die Friday night based on what I've already told you.

24          Q.     That wasn't my question. I just --

25          A.     Well, your question is what in this report.

1 Nothing.

2 Q. Okay.

3 A. Nothing in this report indicates to me that  
4 she died Friday night, Saturday night, or Sunday night.

5 Q. Thank you. Going back to the, sort of,  
6 untitled page where it says Specimen Description and  
7 Submit, and it has the two to three days statement on it?

8 A. Yes.

9 Q. Do you know who wrote this "was there  
10 approximately two to three days" statement?

11 A. I do not know who typed that.

12 Q. Do you know --

13 A. If I asked Dr. Mitchell if he typed it, I  
14 don't recall.

15 Q. Okay. I'm just saying the prior -- and just  
16 to be clear, had you ever discussed this document with  
17 Dr. Mitchell prior to the October/November conversation  
18 with him in 1992?

19 A. I don't recall discussing this document with  
20 Dr. Mitchell. It's possible that I did, but I don't  
21 recall that.

22 Q. Is it possible that you talked to Dr. Mitchell  
23 about his autopsy and findings with respect to the  
24 Valerie Hill murder before the October/November 1992  
25 conversation?

1 A. Is it possible that I talked to him?

2 Certainly. But I don't remember talking to him before  
3 then.

4 Q. Okay. And as you sit here today, do you know  
5 whether the person who wrote "there was approximately two  
6 to three days" was qualified to make that determination?

7 MR. JULIAN: I'll object to the form of  
8 the question.

9 A. I don't know who the author is, so  
10 obviously -- I mean, I can make some assumptions, but  
11 we're lawyers, we don't make assumptions, so not knowing  
12 who the person is, I don't think it was somebody that was  
13 an intern, but I will give the devil his due, I don't  
14 know who wrote it, I don't know the person's  
15 qualifications to offer that opinion.

16 Q. Okay. Now, moving to the next page, this is  
17 the prescription record, do you see that?

18 A. I do.

19 Q. Do you recognize any of the handwriting on  
20 this page?

21 A. I don't.

22 Q. Now, moving to the next page, this is the  
23 certificate of death, do you see that?

24 A. Death certificate, yes.

25 Q. Normally called the death certificate?

1 A. Yes.

2 Q. A portion of this has not been filled out, but  
3 at the bottom, do you see the name Erik Mitchell?

4 A. Are you talking about the -- yes. Are you  
5 talking about --

6 Q. The certifier?

7 A. -- 26, name and address of certifier?

8 Q. Yeah.

9 A. Okay.

10 Q. Going to, I guess it's entry 25, is that Erik  
11 Mitchell's signature?

12 A. Those are his initials, yes. That's the way  
13 he usually signs things, EKM.

14 Q. Okay. And if you go to the bottom, it says  
15 Homicide, that's in the Cause, 30(A)?

16 A. Yes.

17 Q. And it says the date and hour of injury are  
18 unknown; is that right?

19 A. It says -- under date of injury, it says  
20 March, under day it says UNK, standing for unknown, year  
21 '87.

22 Q. Right. And hour is also unknown?

23 A. Hour of injury, unknown.

24 Q. Did you review this certificate of death  
25 during your reinvestigation?



1 A. I'm sure I read it.

2 Q. Do you know if there's a more complete  
3 certificate of death with all of the rest of the pieces  
4 filled out possibly at a later date?

5 A. I do not know that.

6 Q. Moving on to the next page, the certificate of  
7 identification, do you recognize any of the handwriting  
8 on this page?

9 A. Looking at the bottom there, I don't know if  
10 that's EKM or not, so I would have to say I don't -- I  
11 can't say that.

12 Q. The next page is Release of Deceased, which  
13 isn't really relevant. And the last one is a document  
14 that says Onondaga County Medical Examiner's Office. Do  
15 you see that?

16 A. Yes.

17 Q. And it says: I received the body of Valerie  
18 Hill, April 1st, 1987 at 9:52 a.m. Do you see that?

19 A. I do.

20 Q. And it says that -- is that William Walls'  
21 signature?

22 A. I think that's the same guy, William Welch.

23 Q. I thought you said Walls before?

24 A. Did I?

25 MR. VENTRONE: Two different.

1 A. I thought Walls was somebody else.

2 Q. Well, just going back to the other similar  
3 signature on the --

4 A. Chip Walls is the toxicologist. This is  
5 William Welch. If you remember, that's the guy whose  
6 name I said sounded familiar but I just can't place him.

7 Q. Okay. Does looking at this document refresh  
8 your recollection as to who he is?

9 A. No.

10 MR. RICKNER: Is this a good time to take  
11 five?

12 MR. JULIAN: Sure.

13 (Off record: 11:02 a.m. to 11:12 a.m.)

14 BY MR. RICKNER:

15 Q. Now, following the grand jury indictment, did  
16 you have any conversations with Dr. Miller about the  
17 murder of Valerie Hill and his work on the autopsy?

18 MR. VENTRONE: Dr. Mitchell?

19 A. Dr. Mitchell.

20 Q. Thank you.

21 A. None that I recall. Forgive me, it's a period  
22 of time ago, but my normal practice would be prep a  
23 witness for grand jury to a lesser extent than I would  
24 prep them for trial. I don't remember having any  
25 conversation with Erik Mitchell at all regarding this

1 case, but I know that I spoke to him before grand jury,  
2 and I know that I spoke to him before trial, more  
3 extensively before trial.

4 Q. And about how much before trial do you believe  
5 that you spoke to him?

6 A. It would have been somewhere around a week, a  
7 couple of days, somewhere in that vicinity.

8 Q. Okay. Now, do you remember during trial some  
9 slides of the brain coming up?

10 A. Here's my recollection: During the trial,  
11 Calle, defense counsel, was cross-examining Dr. Mitchell  
12 regarding the time of death and suggesting that it wasn't  
13 Friday night, giving reasons why. Dr. Mitchell was  
14 responding to those, and then really for the first time  
15 mentioned slides of the brain having cavities as a result  
16 of putrefaction, and he mentioned Dr. Collins. And then  
17 I think I mentioned it briefly on redirect. Prior to  
18 that, I don't recall any mention of slides.

19 Q. I guess that's not exactly my question.

20 A. Sorry.

21 Q. But just to be clear, you do remember him  
22 mentioning slides of the brain?

23 A. Yes.

24 Q. Okay. Now, what did you understand that to  
25 mean, the slides themselves?

1           A.     A little old fashion, but back in the '90s,  
2     '80s and '90s, you take Kodachrome slides, little things  
3     that are a little bigger than a postage stamp, and I  
4     would usually review those with the medical examiner  
5     before grand jury and before trial.

6           Q.     Okay. And just to be clear, the slides you're  
7     talking about are essentially 35-millimeter film that's  
8     been mounted in a square or cardboard case --

9           A.     Yes.

10          Q.     -- that can be put on a projector?

11          A.     Yes.

12          Q.     I'm older than you think I am.

13                 Now, these were slides of photographs that  
14     were taken during the autopsy?

15          A.     That's my understanding. As I said, it was  
16     not something that I used in my trial preparation. I  
17     didn't really make reference to them until it came up  
18     during the cross.

19          Q.     Just to be clear, would it have been your  
20     practice to go through the photographs of the autopsy as  
21     part of your trial preparation with the medical examiner?

22          A.     Yes.

23          Q.     Okay. And the slides are not -- they're just  
24     a different way of showing a photo, they're not, like, a  
25     microscopic slide?

1 A. Correct.

2 Q. Okay. Why would you refer to them as slides  
3 instead of photos?

4 A. Because they were slides.

5 Q. Okay. Did you ever -- withdrawn.

6 To your knowledge, did Dr. Mitchell ever look  
7 at any microscopic slides, meaning material that's  
8 mounted under two very thin pieces of glass?

9 A. I'm certain he did, only because -- and my  
10 certainty is based on having done dozens and dozens of  
11 cases with him. I do not recall if he discussed that  
12 with me in this particular case, so I do not actually  
13 know if he looked at microscopic slides. I'd be shocked  
14 if he did not.

15 Q. Okay. For clarity, as you sit here today, you  
16 don't know whether or not Dr. Mitchell looked at any  
17 microscopic slides, meaning material held between two  
18 pieces of glass, as part of his preparation for trial in  
19 the Hector Rivas matter?

20 A. That's correct, I do not know.

21 Q. Okay.

22 MR. RICKNER: I guess we're up to  
23 Exhibit 4.

24 (Exhibit 4 marked for identification.)

25



1 BY MR. RICKNER:

2 Q. Do you have the marked copy?

3 MR. JULIAN: He does.

4 Q. Okay. This is an e-mail with two attachments.  
5 Do you know if these are the slides that Dr. Mitchell was  
6 referring to?

7 A. I do not, know.

8 Q. Okay. That's okay. And was it your  
9 understanding of Dr. Mitchell's testimony that reviewing  
10 these slides of the brain is what caused him to push the  
11 date of death out into March 27th?

12 A. No, absolutely not. It just solidified his  
13 position that she could have died Friday, Saturday, or on  
14 the outside early Sunday.

15 Q. And did you -- prior to trial, did you discuss  
16 with Mr. Mitchell how his -- the evidence he reviewed  
17 influenced the time of death and his determination  
18 thereof?

19 A. I'm sure I did.

20 Q. Do you remember his description of how the  
21 evidence he reviewed influenced his time of death, his  
22 estimation of the time of death?

23 A. Do I remember what he said to me?

24 Q. Yeah.

25 A. No.

1 Q. Okay. About how long would you have spent  
2 preparing him for trial?

3 A. Probably less than an hour. Somewhere between  
4 forty-five minutes and an hour.

5 Q. Okay. Now, did you seek any alternate  
6 opinions or information from other medical experts to  
7 determine whether or not what Dr. Mitchell was telling  
8 you was credible?

9 A. No.

10 Q. Just one second. I'm moving to a new section.

11 Now, at some point in 1993, your office,  
12 meaning the District Attorney's Office for Onondaga  
13 County -- actually, let's clean this up a bit.

14 How do you refer to your own office?

15 A. The office.

16 Q. Seriously, how do you call it?

17 A. I call it my family. I don't know what you  
18 mean by that.

19 Q. I mean, do you call it the Onondaga County  
20 District Attorney's Office, the Office of the District  
21 Attorney?

22 A. I call it the DA's office.

23 Q. Okay.

24 A. I don't care what you call it.

25 MR. VENTRONE: I think we all do.

1 Q. Now, your office, the DA's office,  
2 investigated Dr. Erik Mitchell in mid 1993; is that  
3 correct?

4 A. Yes.

5 Q. Okay. What initially caused you to start that  
6 investigation?

7 A. You know, I've been asking myself that  
8 question in anticipation of you asking, and as best I  
9 recall, it was a complaint from a family member who felt  
10 that their relative might not have been buried with quite  
11 everything that he should have been buried with.

12 Q. Okay. And when did you get this complaint?

13 A. I want to say July, August, approximately.  
14 I've looked for records of that. If I had them, I turned  
15 them over to Counsel who would have turned them over to  
16 you. So just from memory, I know it was July or August.

17 Q. Okay. And is Peter Tynan still alive?

18 A. Yes.

19 Q. Does he still work for you?

20 A. No.

21 Q. Okay.

22 A. He retired a number of years ago.

23 Q. Do you know where he lives?

24 A. Yeah.

25 Q. Okay. Is it this state?

1 A. Yes.

2 MR. JULIAN: I think we gave it to you.

3 A. I got his cell phone number. I'll give it to  
4 you.

5 Q. Yeah. We can leave it open on the record for  
6 that.

7 MR. JULIAN: It's in the 26 --

8 MR. RICKNER: Okay.

9 MR. JULIAN: -- whatever it is,  
10 amended --

11 MR. RICKNER: All right.

12 MR. VENTRONE: I saw it. You did.

13 MR. RICKNER: Mark this as Exhibit 4.

14 THE REPORTER: 5.

15 MR. RICKNER: 5. Thank you.

16 (Exhibit 5 marked for identification.)

17 BY MR. RICKNER:

18 Q. Do you recognize what's marked as Exhibit 5?

19 A. Yes.

20 Q. What is it?

21 A. It's a memorandum from Chief Investigator  
22 Peter Tynan to me, dated November 16th, '93, regarding an  
23 investigation of an incident that occurred at the medical  
24 examiner's office.

25 Q. Okay. Now, the first section is the Woodard

1 Photo. Do you see that?

2 A. Yes.

3 Q. Now, do you recall how your office discovered  
4 that this photograph had been taken of Dennis Woodard?

5 A. I don't specifically know. There were news  
6 articles. It might have been from -- I don't remember.

7 Q. Okay. And going to Section B, which is on  
8 page five, there is the Houston Photo?

9 A. Houston. Okay.

10 Q. Now, do you know how the Houston Photo first  
11 came to light? This is the photograph, I guess, of  
12 horseplay by Alexis Houston involving a corpse, a dead  
13 body?

14 A. I'm reading this. It's not ringing a bell. I  
15 don't remember how it came to our attention.

16 Q. The DEC investigation --

17 A. Yes.

18 Q. -- and this is -- involved illegally-stored  
19 mercury, flushing of body parts, and the disposal of  
20 water used to boil bodies. Do you see that?

21 A. Yes.

22 Q. When did you first learn that there was  
23 concerns about the medical examiner's office illegally  
24 storing mercury, flushing body parts, or improperly  
25 disposing its water?



1           A.     I that there were news reports about this  
2 prior to my taking office, but I can't be sure.

3           Q.     Okay. And there's also a New York State  
4 Health Department investigation, page seven?

5           A.     Yes.

6           Q.     Regarding the improper collection of skeletal  
7 remains/body parts, donation of body parts to a facility  
8 that is not a licensed research center, donation of body  
9 parts to Upstate Medical, and apparently et al, even  
10 more. Do you see that?

11          A.     Right. Page seven, right.

12          Q.     When did you become aware of these allegations  
13 that were being investigated by the New York State  
14 Department of Health?

15          A.     I remember speaking to Dennis Griffin, who is  
16 referenced, and I don't remember -- again, I don't  
17 remember when I first spoke to Mr. Griffin.

18          Q.     Could you sort of ballpark the time?

19          A.     No.

20          Q.     Do you think it would be before you took  
21 office, right after you took office, before your  
22 investigation, or something else?

23          A.     Best of my memory, it would have been  
24 contemporaneous with this memo, sometime in -- well, not  
25 contemporaneous with memo, but sometime in July.

1 Q. Now, set this aside for a second.

2 MR. RICKNER: Mark this as Exhibit 6.

3 (Exhibit 6 marked for identification.)

4 BY MR. RICKNER:

5 Q. Now, do you recognize Exhibit 6? Oh, you know  
6 what? I went too fast.

7 A. I recognize it as a memo to me from Chief  
8 Investigator Pete Tynan, dated November 19th, 1993,  
9 referencing as the subject the Onondaga County Medical  
10 Examiner's Office.

11 Q. Now, besides Chief Investigator Peter Tynan,  
12 did anybody else work on the investigation from your  
13 office?

14 A. Not that I recall.

15 Q. Okay. Did you perform any of the  
16 investigation or interviews with respect to this  
17 investigation?

18 A. No.

19 Q. Besides Exhibit 5 that was provided earlier  
20 and this Exhibit 6, did you get any other information  
21 regarding this investigation, to your knowledge?

22 A. I may have been verbally apprised of certain  
23 things. If there was a written document, it would have  
24 been provided.

25 Q. Okay.

1 MR. RICKNER: I'll move on to Exhibit 7.

2 (Exhibit 7 marked for identification.)

3 BY MR. RICKNER:

4 Q. Do you recognize Exhibit 7?

5 A. I do.

6 Q. Okay. What is Exhibit 7?

7 A. A press release regarding, I believe, the  
8 investigation and eventual resignation of Dr. Mitchell.

9 Q. Now, did you author this press release?

10 A. I usually write my own. It certainly -- as  
11 I'm reading it, it's consistent with my style of writing.

12 Q. Okay. So to be clear, when you read this, it  
13 reads like your own writing?

14 A. Yeah. Just in the maybe thirty seconds that  
15 I've had to look at it, it certainly does appear to be  
16 written by me.

17 Q. Okay. Take a minute and read the whole thing,  
18 because I do want to make sure that this is your  
19 statement and that you're familiar with it?

20 A. If it went out, it's my statement.

21 Q. Okay. So even if somebody else may have  
22 provided edits, you adopt this as your own statement?

23 A. Yes.

24 Q. Okay. Now, in Section 1, it says: This probe  
25 was conducted as fairly and as professionally as I know

1 how. Dr. Mitchell was completely cooperative and  
2 answered all questions put to him by me in the presence  
3 of his attorney. Do you see that?

4 A. Yes.

5 Q. Did you personally interview Dr. Mitchell with  
6 respect to this investigation?

7 A. Yes.

8 Q. And how did you record the fruits of that  
9 interview?

10 A. I don't recall.

11 Q. Would it have been your practice to take  
12 notes?

13 A. I can't answer that question, because this  
14 was, you know, a year into my administration or it's  
15 almost two years into my administration. It's kind of a  
16 unique situation. So I don't know if I had developed a  
17 practice at that point. I would have memorialized it  
18 somehow.

19 Q. When you say memorialized it, you mean you  
20 would have written up a memorandum or something else?

21 A. Yeah, taken an affidavit, tape recorded it,  
22 videotaped it, taken notes. I just don't remember how I  
23 did that.

24 Q. Okay. Do you have any reason to believe that  
25 that memorialization would not still be available to you

1 somewhere?

2 A. If I did take notes, if I did take an  
3 affidavit, I have no reason not to provide that to you.

4 Q. I'm not saying that you've done anything wrong  
5 here. I'm just wondering --

6 A. Yes, you certainly are saying I did something  
7 wrong.

8 Q. I just want to know if you know whether or not  
9 there's any reason why it wouldn't still be available?

10 A. I do not know.

11 Q. Okay. And do you know what efforts were taken  
12 to try to collect that information?

13 A. My executive assistant spent hours and hours  
14 looking for documents that have been provided to  
15 Mr. Julian and you.

16 Q. Now, from July of 1993 -- withdrawn.

17 Just to be clear, what date did Dr. Mitchell  
18 actually resign?

19 A. Well, I don't know. It had to be sometime  
20 close to November the 19th or --

21 Q. Okay.

22 A. -- shortly before. You got to have that  
23 information somewhere, right?

24 MR. JULIAN: Yeah.

25 Q. I do. Between July of 1993 and November 1993,



1 do you know if Dr. Mitchell ever testified as a witness  
2 for the prosecution?

3 A. I do not, no.

4 Q. Do you know if you ever disclosed the fact  
5 that this investigation was ongoing to a defense  
6 attorney?

7 A. I don't know if he testified. If he had  
8 testified, the defense attorney would have to live in  
9 Siberia not to know that something was happening with  
10 Dr. Mitchell. Did we specifically advise him? I don't  
11 recall.

12 Q. Would it have been your practice to advise the  
13 district attorney of an ongoing investigation regarding  
14 Dr. Mitchell if he was one of your witnesses at trial?

15 A. You mean defense counsel?

16 Q. Yeah.

17 A. Sure.

18 Q. And just to be clear, you just don't remember  
19 whether or not you had to do it here?

20 A. Correct.

21 Q. Okay. I'd like you to turn to page three?

22 A. Got it.

23 Q. This is at the bottom, it starts on Thursday,  
24 November 18th. Do you see that?

25 A. I'm just reading it. Yes, I see it.

1 Q. Okay. Now, there's a statement from you. It  
2 says, about your concern, quote, that trial juries in  
3 this county could very well begin to focus on the issues  
4 surrounding Erik Mitchell and by distracted from their  
5 task of deciding guilt or innocence. Do you see that?

6 A. Yes.

7 Q. What did you mean by that?

8 A. Well, at this point, prior to the previous  
9 news reports about Dr. Mitchell, the investigation was  
10 beginning to intrude into possible criminal prosecution.  
11 Illegally harvesting body parts, that would have been a  
12 violation of Public Health Law. If the investigation  
13 continued and we discovered that and we discovered  
14 sufficient evidence with which to charge Dr. Mitchell,  
15 obviously that would follow him for the rest of his  
16 career, and he would be cross-examined, isn't it a fact  
17 that you're a convicted criminal, or something like that.

18 Q. Did your investigation into, you know, the  
19 criminal charges that you just mentioned continue after  
20 his resignation?

21 A. No. It was satisfied by his resignation.

22 Q. Okay. And so if I'm understanding this  
23 correctly, the investigation into criminally harvesting  
24 body parts stopped because he quit?

25 A. Correct.

1 Q. Okay. Was that an agreement between you,  
2 Mr. Mitchell, and/or his attorney, I believe  
3 Mr. Cominsky?

4 A. Yes.

5 Q. Okay. When did you reach that agreement?

6 A. It would have been the day of his resignation.

7 Q. Did you have --

8 A. Can I back up for a second? I'm sorry.

9 Q. Please do.

10 A. I just want to be clear in my mind, because  
11 the meeting that we had with County Executive Pirro,  
12 Mr. Cominsky, Dr. Mitchell, and I believe Pete Tynan was  
13 there, there may have been some other staff members for  
14 the county exec there, I don't recall it being my walking  
15 in and saying I demand your resignation. It was I  
16 confirmed where my office was going to be going with the  
17 county executive in front of Mr. Mitchell, Dr. Mitchell,  
18 and his attorney. And at that point, Dr. Mitchell said  
19 that he would resign. And then I confirmed with  
20 Mr. Cominsky that, okay, this is the end of it.

21 Q. Okay.

22 A. I don't want to split hairs with you, but I  
23 think that -- that's my best recollection of how it  
24 happened.

25 Q. So to be clear, your recollection is that

1 Dr. Mitchell offered to resign, and you said okay, in  
2 response, I will drop the investigation?

3 A. Yeah. I probably said that privately to  
4 Mr. Cominsky. I would have confirmed it with him  
5 somehow.

6 Q. Okay. And was this agreement ever reduced to  
7 writing?

8 A. If it wasn't, it should have been, but I don't  
9 remember. Sid and I have a good relationship. He  
10 probably took my word for it.

11 Q. Now, going back for a moment, when did you  
12 first start working with Dr. Mitchell?

13 A. Let's see. Do you have a notation as to when  
14 he was hired or when he took office?

15 Q. No. I don't get to take his deposition until  
16 next week.

17 A. Oh. I just thought you might have had it on  
18 some other document --

19 Q. I don't think I actually have his personnel  
20 file, to be clear.

21 A. I don't remember the first case I worked with  
22 him on, but there were many, many cases when I  
23 was -- when I left the office, I was the chief homicide  
24 prosecutor, so from '83 -- actually, a little before '83,  
25 but '83 to '86 all I did was homicide cases. And



1 whenever he started, I would have been working with him  
2 extensively, had about twenty murders a year in Onondaga  
3 County back then. And then I actually consulted with him  
4 when I was a defense lawyer on one rather high profile  
5 case that I remember, may have been more.

6 Q. Now, going back, so at a certain point, you  
7 became chief of homicides or some other similar title?

8 A. Chief of the homicide bureau, yes.

9 Q. Okay. You became chief of the homicide  
10 bureau. And that was in 1983?

11 A. Correct.

12 Q. Is that about the time that Dr. Mitchell  
13 started working for Onondaga County as the chief medical  
14 examiner?

15 A. It sounds about right. I mean, Dr. Martin  
16 Hilfinger was before him. I worked a lot of cases with  
17 Dr. Hilfinger. It sounds right. Could have been '82,  
18 could have been '84, but it sounds about right.

19 Q. And you said there were about twenty homicides  
20 a year in Onondaga County back then?

21 A. Yes.

22 Q. About how many would result in criminal  
23 prosecutions?

24 A. We had a pretty good solve rate, so, you know,  
25 fifteen.



1 Q. That is a good solve rate.

2 And out of those fifteen cases, when you were  
3 the head of the homicide bureau, how many would you  
4 actually have worked on yourself, like as part of the  
5 trial team?

6 A. Just an estimate, about half.

7 Q. Okay. So putting it together, you know,  
8 between '83 and '86, you probably worked on somewhere  
9 between twenty and twenty-five homicide cases in  
10 Onondaga?

11 A. Well, I would work on all of them, but your  
12 question, I think, is me personally prosecuting a case.  
13 In other words, if I delegated it to an assistant DA, I  
14 would be hands-on and say what are you doing, you know,  
15 but that person would be responsible for grand jury and  
16 trial.

17 Q. Right.

18 A. But you're asking me exclusive jurisdiction  
19 over the case, your numbers sound about right.

20 Q. Okay. And in those cases, how often was  
21 Dr. Mitchell one of the expert witnesses?

22 A. At least two-thirds of the time. I mean, I  
23 know he had assistants, but he did most of the homicides  
24 himself.

25 Q. Okay. So just in your time in the homicide

1 bureau, would it be fair to say you put Dr. Mitchell on  
2 the stand fifteen or eighteen times for his expertise?

3 A. Sure. That -- at least that number, yeah.

4 Q. Okay. Is the medical examiner's office in  
5 Onondaga County an independent body, meaning that they're  
6 supposed to make their own independent choices free of  
7 influence from any other group in the county?

8 A. No, they're responsible to the County  
9 Executive.

10 Q. Okay. And when you say that the medical  
11 examiner's office is responsible to the county executive,  
12 what does that mean?

13 A. Budgetary purposes, hiring and firing, I mean,  
14 the individual service at the pleasure of the county  
15 executive.

16 Q. That's actually not what I'm talking about. I  
17 mean with respect to the decision-making power. Is the  
18 medical examiner expected to exercise  
19 independent -- that's a poor way of phrasing that one.  
20 Let me start over.

21 Would it be correct to say that the medical  
22 examiner in Onondaga County was expected to exercise  
23 their independent judgment with respect to their  
24 determinations free of any influence from any other  
25 political body in the county?

1           A.     I think that's fair to say. The DA's office  
2     has certain statutory authority over the medical  
3     examiner, such as we can order an exhumation or an  
4     autopsy, and by statute we are entitled to review any  
5     records without subpoena at the medical examiner's  
6     office. But in terms of independence, yes --

7           Q.     Right.

8           A.     -- a competent professional, a board certified  
9     forensic pathologist should come to his or her own  
10    conclusions regarding cause and manner of death.

11          Q.     Okay. And would it be correct to say that the  
12    chief medical examiner for Onondaga County would be sort  
13    of the final determination with respect to things like  
14    autopsies, time of death, and investigations into  
15    homicides?

16          A.     No. The final buck stops right here. The DA  
17    has the final determination. I've had a number of cases  
18    that have been ruled accident and people are serving life  
19    sentences.

20          Q.     So if I'm understanding you correctly, that  
21    your office would override the determinations of the  
22    medical examiner's office when they deemed it fit?

23                   MR. JULIAN: Object to the form of the  
24                   question. You can answer it.

25          A.     I mean, I can give you an example that might

1 help clarify. Steven Vandersluys, V-A-N-D-E-R-S-L-U-Y-S,  
2 first name Steven with a V, killed three of his children  
3 over the course of many years, and each child's death  
4 certificate listed the cause of death as Sudden Infant  
5 Death Syndrome. That did not deter me from prosecuting  
6 Steven Vandersluys, who is still in state prison. That's  
7 just one example.

8 Q. Okay. And when you would perform -- let's say  
9 the prosecution of Steven Vandersluys, you needed to  
10 establish that it wasn't an accident, right?

11 A. That it wasn't SIDS.

12 Q. Yes.

13 A. Right.

14 Q. Okay. Did you hire your own expert to do  
15 that?

16 A. In that case, I did. First of all, the  
17 autopsies were not done by Dr. Mitchell, so I had  
18 Dr. Mitchell, and I reached out to someone who had a  
19 national reputation in pediatric pathology.

20 Q. Right. But let me phrase this a little  
21 differently.

22 Was there ever an instance when, for example,  
23 the medical examiner, whether Dr. Mitchell or someone  
24 else, made a determination that it was an accident, and  
25 your office called them and said this isn't an accident,



1 we need this marked as a homicide?

2 MR. VENTRONE: Object to the form.

3 A. I wouldn't put it that way. I think you're  
4 probably referring to Dr. Neulander, that was originally  
5 determined to be an accident by Dr. Stoppacher. With all  
6 due respect to Dr. Stoppacher, who in my opinion is a  
7 very, very competent forensic pathologist, his  
8 investigation was minimal. He did not take into account  
9 a number of other forensic factors aside from the wound  
10 to the victim, and after many, many months of  
11 investigation, Dr. Stoppacher changed his opinion that  
12 the victim in that case was -- the death was as a result  
13 of a homicide, a blow to the head.

14 MR. JULIAN: I objected to the form of  
15 that question but I couldn't get it out. I  
16 apologize.

17 MR. RICKNER: That's fine. So noted.

18 Q. I'm going to talk about that process, though.  
19 Would it be correct to say that the medical examiner may  
20 reexamine the evidence and come to a different conclusion  
21 in certain cases?

22 A. It happens all the time.

23 Q. Okay. But would you agree with me that that's  
24 different from your office telling the medical examiner  
25 that they have to change their opinion?



1           A.     I would never do that. I have never done  
2     that.

3           Q.     I didn't think you did. I'm just trying to  
4     establish sort of the lines of control here.

5                     So to understand the relationship between the  
6     DA and the medical examiner's office, would it be correct  
7     to say that the medical examiner's office exercises  
8     independent judgment, but sometimes the district  
9     attorney's office would request that they do further  
10    examination or make a different determination?

11          A.     What you just said is very fair.

12          Q.     Okay. Thank you.

13                     MR. RICKNER: This actually may be a good  
14     time for -- can we go off the record for a  
15     second?

16                     MR. JULIAN: Yes. Sure.

17                     (Off record: 11:50 a.m. to 12:11 p.m.)

18    BY MR. RICKNER:

19          Q.     Now, would it be correct to say that at some  
20     point, there started to emerge a series of newspaper  
21     articles criticizing Dr. Mitchell for various practices  
22     in his office?

23          A.     Yes.

24          Q.     Okay. When do you first remember seeing  
25     newspaper articles criticizing Dr. Mitchell?

1           A.     It would have been sometime before I took  
2     office and after I had left the DA's office.

3           Q.     So maybe 1992?

4           A.     No. It would have been before I took office.

5           Q.     Oh, you mean so 1991?

6           A.     '90, '91, somewhere around there. It had  
7     to -- yeah.

8           Q.     And did you make it your practice to follow  
9     newspaper articles regarding Dr. Mitchell particularly  
10    after you took office?

11          A.     Yeah. If there was an article concerning  
12    Dr. Mitchell, I would make myself aware of it.

13          Q.     Let's just say from when you took office  
14    through May, were there any trials where you used  
15    Dr. Mitchell as a witness for his expertise?

16          A.     I don't recall. I did not.

17          Q.     You did not?

18          A.     Right.

19          Q.     Okay. Do you know if anybody else in your  
20    office did?

21          A.     I don't know. The homicide prosecutors at  
22    that time were Glenn Suddaby and Steve Dougherty, but if  
23    they tried a case that soon in my administration, I don't  
24    recall.

25          Q.     Okay. And why was it that you were keeping

1 track of the newspaper articles regarding Dr. Mitchell?

2 A. Well, for obvious reasons. They wanted to  
3 know if he was doing his job, if any of the articles had  
4 anything to do with his credibility or his competence or  
5 his expertise.

6 Q. Okay. After you took office, let's say in the  
7 first four or five months, was there any time that you  
8 were worried that the newspaper articles might influence  
9 a jury or result in cross-examination?

10 A. No.

11 Q. Was there a time, let's say between when you  
12 took office and the first couple of months afterwards,  
13 where you ever disclosed newspaper articles as part of  
14 either your Brady/Giglio or Rosario obligations?

15 A. No.

16 Q. Why not?

17 A. I don't believe they constituted Giglio or  
18 Brady material.

19 Q. Okay. Why do you say that?

20 A. As I recall, the allegations was people, not  
21 necessarily Dr. Mitchell himself, but people under his  
22 employ that were illegally -- allegedly illegally  
23 disposing of human tissue samples, and there were  
24 articles that I recall about a -- the best way to  
25 describe it would be a forensic examination setup that he

1 had where bones were buried, and investigators were to  
2 come out to the scene in an attempt to exhume the body  
3 and examine the scene and make determinations. None of  
4 that has, in my judgment -- it might be salacious, it  
5 might be bad management, but it doesn't have anything to  
6 do with his credibility.

7 Q. Okay. And would you agree with me when a  
8 medical examiner testifies, that there's a certain  
9 impression to the jury they have an organized medical  
10 office that's doing competent work?

11 A. No. I wouldn't -- I mean, we would hope, but  
12 I don't make assumptions that juries think everybody who  
13 testifies is competent.

14 Q. At any point did you ever worry that if  
15 Dr. -- withdrawn.

16 At any point did you ever worry that if  
17 allegations came out that Dr. Mitchell was improperly  
18 storing body parts or improperly disposing of them, that  
19 that would lead a jury to believe that he may not have  
20 been performing other parts of his job adequately?

21 A. I think --

22 MR. JULIAN: Object to the form of the  
23 question. You may answer.

24 THE WITNESS: Thank you.

25 A. I think that would describe my mindset in



1 November of '93.

2 Q. Okay. So let's go -- so in November of '93,  
3 it was your worry that if a jury found out, for example,  
4 that Dr. Mitchell was improperly disposing of body parts,  
5 that would lead them to conclude that he may have been  
6 performing other parts of his job inadequately?

7 A. I don't know that I would be that specific.  
8 My concern was that if Dr. Mitchell was charged with a  
9 crime, it would affect a jury's impression of him.

10 Q. Okay. Taking the crime out of it, were you  
11 ever concerned that the fact that Dr. Mitchell was  
12 accused of improperly storing body parts would lead a  
13 jury to conclude that he wasn't doing other parts of his  
14 job correctly?

15 A. No.

16 MR. JULIAN: Object to the form of the  
17 question.

18 MR. VENTRONE: Object to the form.

19 Q. Did you have any concerns that Defense Counsel  
20 would take the various newspaper articles and  
21 cross-examine Dr. Mitchell with them at trial?

22 MR. JULIAN: Form.

23 A. No. No. You asked me about his -- was that a  
24 concern of mine? No.

25 Q. Okay.



1 A. No.

2 Q. Did any Defense Counsel ever try to  
3 cross-examine Dr. Mitchell using newspaper articles or  
4 the allegations?

5 A. I do not know. Not in cases I had.

6 Q. Okay. Did you ever consider going to a judge  
7 in advance and making a motion in limine trying to  
8 exclude that line of questioning?

9 A. I did not.

10 MR. JULIAN: Form.

11 A. I did not. I don't know of whether assistants  
12 did.

13 Q. Okay. Did you ever see any defense counsel  
14 appear in court with a stack of newspaper articles  
15 regarding Dr. Mitchell?

16 A. I don't recall.

17 Q. Okay. If you had seen defense counsel  
18 employing that strategy, let's say around March of 1993,  
19 what would you have done have?

20 MR. JULIAN: Form.

21 A. Purely hypothetically, depending on my  
22 relationship with the defense counsel, I may have said  
23 what's that. And if it was something I thought was  
24 improper, I would object at the appropriate time.

25 MR. RICKNER: This is Exhibit 8.

1 (Exhibit 8 marked for identification.)

2 BY MR. RICKNER:

3 Q. Have you had a chance to review Exhibit 8?

4 A. Yes. I'm sorry. I didn't know you wanted me  
5 to read this.

6 Q. I thought you sort of were. You looked like  
7 you were --

8 A. Yeah, I was.

9 Q. Just to go to the front page of Exhibit 8 in  
10 the top right, it's a photocopy of a photograph --

11 A. Yes.

12 Q. -- from a newspaper article?

13 A. Yes.

14 Q. And on the right, meaning the right side of  
15 the photograph, that's Dr. Mitchell in glasses?

16 A. That certainly is, yes.

17 Q. Okay. And skipping over the person whose face  
18 is partially covered with a hand, on the left side of the  
19 photograph is that you?

20 A. Yes.

21 Q. Okay. And I believe you mentioned earlier  
22 this refreshed your recollection that you attended a  
23 press conference with Dr. Mitchell?

24 A. Actually, it doesn't refresh my memory. I  
25 don't remember this at all. But obviously, I'm there.

1 I'm reading it. I don't think I'm quoted here. I don't  
2 think I spoke at this thing, but obviously, I'm there.  
3 So I'll answer whatever I can.

4 Q. Okay. Do you have any reason to believe that  
5 you weren't at a press conference in March of 1993?

6 A. Come on. I was there. I'm standing next to  
7 the guy.

8 Q. Okay.

9 A. I just don't remember it.

10 Q. Okay.

11 A. I -- honestly.

12 Q. Now, based on the article, this press  
13 conference was called by Dr. Mitchell following a series  
14 of allegations that had been made against him?

15 A. Yes.

16 Q. Okay.

17 MR. RICKNER: Now, I'd like to mark this  
18 as Exhibit 9.

19 (Exhibit 9 marked for identification.)

20 A. Did you want me to read it --

21 Q. Yeah, read it over.

22 A. (Witness complies.) Good.

23 Q. Okay. So first question for Exhibit 9: Do  
24 you recall ever seeing this document before?

25 A. No.

1 Q. Okay. In the initial months, let's say  
2 between the beginning of 1993 and March 3rd, 1993, did  
3 you ever discuss the allegations in Exhibit 9 with  
4 Dr. Mitchell?

5 A. I don't remember speaking to him about them.

6 Q. Okay. Were you aware of the allegations in  
7 Exhibit 9 regarding Dr. Mitchell from things like  
8 newspaper articles?

9 A. Exactly from newspaper articles and from  
10 William Sullivan, who was an investigator in the ME's  
11 office, who was then and still is a close friend of mine.

12 Q. Okay. What did William Sullivan tell you?

13 A. He was -- I won't use the language he used.  
14 We spoke colloquially. But it was essentially that  
15 Mitchell was a bad manager and wasn't running the office  
16 properly.

17 Q. Okay. And did Mr. Sullivan, did he provide  
18 any writings to anybody that you know of regarding his  
19 allegations?

20 A. He did not to me. If he did to someone else,  
21 I don't have any knowledge of it.

22 Q. Okay. Now, with respect to the allegations in  
23 Exhibit 9 and the conversation that you had with  
24 Mr. Sullivan, did you ever disclose that to Defense  
25 Counsel for any reason?

1           A.     No. That he was allegedly a bad manager, I  
2     did not.

3           Q.     Okay. And why not?

4           A.     Why would I? I don't mean to be flippant.  
5     Why would I? I disclose things that are -- that have to  
6     do with a person's credibility. Somebody's opinion that  
7     he's a bad manager -- I have opinions about Dr. Ragle, I  
8     don't disclose those to Defense Counsel if he testified.  
9     It never occurred to me that somebody's opinion that  
10    Mitchell is a bad manager is Brady material.

11          Q.     Okay.

12          A.     Erik Mitchell was a brilliant medical  
13    examiner, fantastic witness, and a decent guy, and he  
14    obviously took umbrage with some of the things that were  
15    being said about him.

16          Q.     Going back to 1993, I want to talk about your  
17    office's practices regarding these types of disclosures.  
18    You are drawing a line between where something impacts  
19    somebody's credibility versus something that you wouldn't  
20    disclose. Where do you draw that line?

21                   MR. JULIAN: Object to form.

22                   MR. VENTRONE: Object to the form.

23          A.     That's a tough question to answer. First of  
24    all, the process is different today.

25          Q.     I'm talking about 1993.



1           A.     I understand that. That's why I said the  
2     process is different today. Back then, the disclosures  
3     to Defense Counsel regarding Brady would have to do with  
4     credibility, misconduct. If I knew that an expert  
5     witness had an affair, I would not disclose that to  
6     Defense Counsel even though it may be salacious and  
7     fertile grounds for cross-examination in somebody's  
8     twisted mind. But I did not think in 1993 or today that  
9     being accused of being a bad manager is Brady material.

10          Q.     Okay. You said misconduct. Let me step back  
11     for a second, actually.

12                 So I think you were drawing the line between  
13     allegations of misconduct and findings of misconduct; is  
14     that correct?

15                         MR. JULIAN: Form.

16          A.     I don't recall that.

17          Q.     All right. Well, is an allegation that  
18     somebody is dicing up brains and flushing them down the  
19     toilet the kind of misconduct you would have disclosed as  
20     Brady material?

21                         MR. JULIAN: Form.

22                         MR. VENTRONE: Object to the form.

23          A.     No.

24          Q.     Okay. And how do you distinguish that from  
25     other types of misconduct?

1           A.     Did he lie, did he conceal, did he manipulate  
2     evidence, did he change something, did he -- was  
3     he -- did he change the time of death to please the  
4     district attorney, has he done something that would  
5     reflect on his competence, did he lie about his pedigree,  
6     his education, his training.

7           Q.     Okay. And it was your practice in 1993 that  
8     if it didn't arise to the level of what you just  
9     described, that it wouldn't have been Brady material that  
10    is disclosed?

11          A.     Not on cases that I handled, correct.

12          Q.     Okay. And was that the policy of the office  
13    that you set?

14          A.     I did not have initially a specific policy  
15    regarding Brady material other than the clear obvious  
16    education of assistant DAs, what their obligations were  
17    under Brady. That would be training that at that point  
18    would have been done by the now Professor Gary Kelder.

19          Q.     I guess I missed something in there. Are you  
20    saying that you instituted training after 1993 in your  
21    office regarding Brady?

22          A.     No. I don't remember specifically when.  
23    Every DA hired today gets a booklet regarding his or her  
24    obligations under many, many things, including Brady,  
25    something that I instituted statewide. In addition, they

1 get an office manual. I did not have those in 1993.

2 When I instituted those, I don't remember.

3 Q. Okay. Was it your understanding that what you  
4 did was the policy of the office and that other attorneys  
5 would follow suit?

6 MR. JULIAN: In 1993?

7 Q. In 1993, of course.

8 A. No. I mean, if I did something or did not do  
9 something, is that policy of the office? You know, each  
10 lawyer has his or her own procedure, style, manner of  
11 dealing with things. I don't think that I would say that  
12 if I did something, that's office policy. I would expect  
13 people to say, well, if he does it, that's the boss,  
14 let's try and copy him.

15 Q. Understood. Now, at some point there was an  
16 investigation into misconduct by Dr. Mitchell in around  
17 maybe March of 1993 instituted by the county attorney?

18 A. If you're asking -- I don't know. I don't  
19 know.

20 Q. Okay. Who is Nicholas Pirro?

21 A. He is the former county executive of Onondaga  
22 County.

23 Q. Okay. And what years was he in office, to  
24 your knowledge?

25 A. Let's see. I think -- I know we ran together

1 in '91, and I think he was an incumbent, so that would  
2 have meant that he would have been in office in '87.

3 Q. Okay. And when did he leave office?

4 A. Let's see. When did Nick retire? I don't  
5 recall. '91, '95, '99. Maybe 2003. '99 or 2003, one of  
6 those.

7 Q. Okay. And do you know where he is now?

8 A. At 11:30, he's probably having lunch. He  
9 lives in Syracuse. I saw him the other day.

10 Q. Okay. So that's what I'm asking. You're  
11 still in contact with Mr. Pirro?

12 A. Yeah.

13 Q. Okay. And with respect to Dr. Mitchell,  
14 when's the last time you spoke to Dr. Mitchell?

15 A. Wow.

16 Q. Outside the presence of counsel in the event  
17 that happened.

18 A. It's been years. I don't remember.

19 Q. Okay. Since 2016 have you spoken to  
20 Dr. Mitchell?

21 A. I don't remember.

22 Q. There was a period of time between reversal of  
23 the conviction by the second circuit and Mr. Rivas'  
24 death. In that time period did you ever talk to  
25 Dr. Mitchell?



1 A. No.

2 Q. Do you know if anybody at your office did?

3 A. I do not know. It would have been Rob Moran  
4 who was assigned to do the routine on the case until it  
5 came to trial.

6 Q. What do you mean by the routine?

7 A. You know, bail applications, court  
8 appearances, additional discovery, additional testing of  
9 evidence, which, as you know, was conducted.

10 Q. Understood. All right.

11 MR. RICKNER: We're going to mark this as  
12 Exhibit 10.

13 (Exhibit 10 marked for identification.)

14 A. I've read it.

15 Q. Okay. Do you recognize Exhibit 10?

16 A. No.

17 Q. Okay.

18 A. I mean, I know what it is. Do you want me to  
19 put on the record what it is?

20 Q. Sure.

21 A. It's a memo to Nick Pirro, the county  
22 executive, from Diane Tucker, who I knew to be in the  
23 county attorney's office, and it's titled Cooperation  
24 with Medical Examiner Investigation.

25 Q. Okay. At some point did you become aware of



1 the medical examiner investigation by County Executive  
2 Pirro?

3 A. I don't have a specific recollection today,  
4 but I'm sure I did.

5 Q. Okay. Do you know if it would have been  
6 before or after the Rivas trial?

7 A. I do not know.

8 Q. Okay.

9 MR. RICKNER: I'm going to mark this as  
10 Exhibit 11.

11 (Exhibit 11 marked for identification.)

12 A. Okay.

13 Q. Looking at this, does this refresh your  
14 recollection that you may have been provided an interview  
15 in April of 1993 as part of this investigation?

16 A. No.

17 Q. Do you know what date Hector Rivas was  
18 convicted?

19 A. No.

20 Q. Now, just being more general, do you remember  
21 providing an interview as part of that investigation by  
22 County Attorney -- or County Executive Pirro?

23 A. No. I see that I'm listed on Exhibit 11 as  
24 being scheduled for an interview on Tuesday, April 13th,  
25 1993 at 1:30, but I just don't have any recollection of

1 that whatsoever.

2 Q. Okay. With respect to Erik Mitchell, did you  
3 ever testify in front of the New York State legislature?

4 A. New York State legislature about him?

5 Q. Yes.

6 A. I don't think so. Do you have evidence to the  
7 contrary? I don't remember.

8 Q. I'm just checking boxes.

9 A. Oh. I can't imagine why I would --

10 Q. Besides the county executive, do you know if  
11 you provided an interview or testimony to any other  
12 government group or organization regarding Erik Mitchell?

13 A. Just the interview we referenced earlier that  
14 you -- you had, I think, described it as in front of the  
15 county attorney. It was actually in front of the county  
16 leg.

17 Q. Okay. So the interviews, you believe that was  
18 in front of the county legislature?

19 A. I thought it was.

20 THE WITNESS: Wasn't it?

21 MR. JULIAN: Well --

22 Q. I'm just going with your memory --

23 MR. JULIAN: On the record, I told you  
24 that I was unsure as to the source, and at  
25 some point it was represented that those tapes

1           that you gave me -- that the county gave you  
2           that you gave me were from that -- from the  
3           county legislature. That may be my mistake.

4           MR. RICKNER: Okay.

5           A.     So was it the county attorney? Because I  
6           don't remember. I listened -- I told you, I listened to  
7           five minutes of it. I just don't remember it.

8           Q.     Okay. I'm just going from your memory. But  
9           you gave an interview about Erik Mitchell?

10          A.     Yes.

11          Q.     Okay. And I am going to mark this as  
12          Exhibit 12. Keep one for -- obviously you're not going  
13          to be reading this --

14          A.     Right.

15          Q.     -- that wouldn't be possible. I'm going to  
16          represent that the only file on this is titled Tape  
17          Six-Fitzpatrick Unknown Date Side A.wav. That's the  
18          file.

19          MR. JULIAN: That's the file.

20                   (Exhibit 12 marked for identification.)

21          MR. RICKNER: Hopefully everyone can hear  
22          this. I don't know how loud it's going to be.

23                   (Recording played.)

24          BY MR. RICKNER:

25          Q.     Is that your voice?

1 A. Yes.

2 Q. Okay. And did you ever describe Erik Mitchell  
3 as being invaluable in the courtroom?

4 A. Is --

5 Q. I mean, I'll play it for you.

6 A. If it's on the tape, obviously I said it.

7 Q. Let's just go back to that.

8 (Recording played.)

9 A. That refreshes -- well, it doesn't refresh my  
10 memory because I don't remember this conversation, but  
11 clearly that's my voice and I called him invaluable, and  
12 that was true when I said it.

13 Q. Okay. All right. We can move forward a bit.  
14 Actually, can you do me a favor? Go back to Exhibit 11,  
15 and unfortunately, it's only first names. Do you  
16 recognize Sam and Jack as being two people involved with  
17 the county perhaps?

18 A. Where are you?

19 Q. If you look at, like, April 13th, it says Sam  
20 available after 3:30?

21 A. Oh, Sam available.

22 Q. Like Sam and Jack, do those refresh your  
23 recollection as to who those might be?

24 A. Sam could be Sam Laguzza. He was a county  
25 legislature. Jack's not ringing a bell.

1 Q. All right. So I'm going to go to another  
2 portion, it starts at thirteen minutes, exactly  
3 thirteen minutes into the file. We're going to actually  
4 play this. It's a little back and forth that goes about  
5 two minutes, but I want you to hear the whole thing.

6 A. Okay.

7 (Recording played.)

8 THE WITNESS: Can you hear that?

9 BY MR. RICKNER:

10 Q. Let's back up a little. I've heard this a  
11 million times, so I don't need to hear it again. Let's  
12 back up, actually, to maybe more like -- so this is  
13 starting at 12:29. I'm going to stick it closer to you  
14 so maybe you have a better chance of hearing the speaker,  
15 and then we'll move to headphones next.

16 (Recording played.)

17 Q. Could you hear what I just played from the  
18 recording of your interview?

19 A. Yeah. I couldn't hear all the questions  
20 perfectly, but I got the gist by my answers of what the  
21 question was.

22 Q. Okay. So I just want to go back. Does  
23 hearing that refresh your recollection about a time that  
24 a defense attorney did show up in court with a bunch of  
25 newspaper articles to potentially cross-examine



1 Dr. Mitchell?

2 A. That was in reference to Calle.

3 Q. So you think that this interview was directly  
4 related to Calle's cross-examination of Dr. Mitchell in  
5 the Rivas trial?

6 A. No. Calle chose not -- as I said on that tape  
7 that we just listened to, Calle chose for whatever reason  
8 not to go into that.

9 Q. Okay. I just -- listening to this  
10 recording --

11 A. Right.

12 Q. -- you're saying that Calle, during the Rivas  
13 trial, showed up with these newspaper articles and chose  
14 not to use them, and the reason that you remember that is  
15 because of this recording?

16 A. Yes.

17 Q. Okay. Now, of course --

18 MR. JULIAN: May I object to the form of  
19 that? I apologize.

20 MR. RICKNER: Well, then, let's ask that  
21 again.

22 Q. You're saying, if I understand this correctly,  
23 that listening to this portion of your prior interview  
24 sparked a memory that Calle, the defense attorney in  
25 Rivas, had shown up to court with newspaper articles

1 about Dr. Mitchell to use in the Rivas trial?

2 A. Yes.

3 Q. Okay.

4 A. No question that I'm referring to Calle.

5 Q. Okay. And do you know when that investigation  
6 ended?

7 A. I'm sorry. Which investigation?

8 Q. The county attorney's investigation, do you  
9 know when it was completed?

10 A. I do not know when it ended.

11 Q. Okay.

12 MR. RICKNER: Let's just mark this as

13 Exhibit 13.

14 (Exhibit 13 marked for identification.)

15 A. Rob?

16 Q. Yeah.

17 A. Looking at this, remember you asked me  
18 about --

19 Q. Yes. Let's do this the formal way, because I  
20 think you're about to say something helpful, but I want  
21 to make sure it's clear on the record. Do you recognize  
22 Exhibit 13 as being the Report of the Committee on the  
23 Medical Examiner following the County's investigation?

24 A. Yes.

25 Q. And you're looking at the signature page?

1 A. Yes.

2 Q. And would it be correct to say that the  
3 signature page helped refresh your recollection regarding  
4 some of the names that you had seen earlier?

5 A. Yes. On Exhibit 11, you asked me about Sam  
6 and Jack. Sam now I feel comfortable saying was Sam  
7 Laguzza. John Mitchell signed this report. He was  
8 commonly addressed as Jack.

9 Q. Got it. Gotcha. Who are these -- let's  
10 actually go through. Diane Tucker, Chief Deputy County  
11 Attorney.

12 A. Right.

13 Q. What's the chief deputy county attorney?

14 A. That would be the number one assistant to the  
15 county attorney. I think it was Jon Gerber, J-O-N,  
16 Gerber, G-E-R-B-E-R, I believe was the county attorney at  
17 this time, but I'm not a hundred percent sure. Joanna  
18 Gozzi is Senior Deputy County Attorney. I remember  
19 Joanna very well. And Zach Karmen, Chief Welfare  
20 Attorney, I didn't know him as well as I know the other  
21 two people, but I remember Zach.

22 Q. Okay. And John C. Mitchell and Sam Laguzza,  
23 that's the Sam and Jack?

24 A. Yes. They were both county legislators back  
25 then.

1 Q. Okay. Does this refresh your recollection as  
2 to who interviewed you?

3 A. No. Am I quoted in the report? Direct me to  
4 that if I can look at it.

5 Q. Actually, I can. If you go back, there's a  
6 list -- yes, there it is. If you go to page three, which  
7 is partially obscured by the Bates stamp, there's  
8 something that says: The following constitutes the list  
9 of interviewees.

10 A. Right. And I see I'm mentioned on page five  
11 as having been interviewed.

12 Q. Okay. And I'm just wondering, in putting this  
13 all together, does this refresh your recollection that  
14 the interview you provided was part of this  
15 investigation?

16 A. No. Is there any quotes in here you want to  
17 direct me to, or I don't know.

18 Q. There are no quotes in there whatsoever.

19 A. I meant references, I should have said. I  
20 just don't remember this, and I apologize.

21 Q. Okay.

22 A. I know it exists. It -- I know it is what it  
23 is. They appear to have interviewed a lot of people,  
24 made some conclusions.

25 Q. Right. I guess what I'm asking is, put it the

1 other way, do you have any reason to believe that the  
2 interview that I played audio of was for anything else  
3 but this investigation by the county attorney?

4 A. I'm sorry. You're suggesting that that audio  
5 is my interview for this. I -- if I could -- I wish I  
6 could hear the voices better, but that could be. I don't  
7 remember.

8 Q. Well, you know what? Let's go back to it and  
9 play you some -- there's actually in the very beginning  
10 more voices.

11 A. Do I reference anybody, like, do I say like if  
12 I'm speaking to you, I would say Rob, or do I say Diane  
13 or --

14 Q. There's sort of some joking parts in the  
15 beginning that I'm going to see if maybe that refreshes  
16 your recollection.

17 A. Maybe those help.

18 Q. No, I think that actually you might be able to  
19 hear the voices better than just about anybody else that  
20 we had spoken about. Hold on. Let me play -- this is  
21 actually from the very beginning.

22 (Recording played.)

23 A. That sounded very much like Joanna Gozzi. You  
24 know, I think you're right. I think I would accept that  
25 that's my interview by this committee. I definitely



1 recognize Joanna Gozzi's voice. She has a very  
2 distinctive voice.

3 Q. Okay.

4 A. And the other people could easily be Sam,  
5 Jack, and Diane.

6 MR. RICKNER: I'm going to mark this as  
7 Exhibit 14.

8 (Exhibit 14 marked for identification.)

9 A. I have Exhibit 14.

10 Q. Now, leaf through Exhibit 14. I don't know  
11 that you need to read the whole thing, it doesn't seem  
12 productive. And this is a letter from David Ragle to the  
13 county executive; is that fair to say?

14 A. Yes.

15 Q. All right. Now, would it be correct to say  
16 that, you know, January of 1993 and beforehand, Dr. Ragle  
17 had some criticisms of Dr. Mitchell?

18 A. Sure.

19 Q. Okay. And there were multiple different  
20 letters, I'll represent to you, that were written to the  
21 county executive regarding Erik Mitchell. Do you recall  
22 ever seeing Exhibit 14 before?

23 A. I do not recall seeing it before. I may have,  
24 but I just don't recall it.

25 Q. Okay. Do you recall seeing any other of the

1 letters criticizing Dr. Mitchell that were sent by  
2 various people in his office?

3 A. No.

4 Q. Okay. Did you ever discuss Dr. Rigle with  
5 Dr. Mitchell?

6 A. Did I discuss? In the back of my mind, I have  
7 a recollection of -- I don't want to slander the guy, but  
8 I have a recollection of Mitchell telling me that Rigle  
9 showed up at a crime scene drunk, and that it  
10 just -- that's about it or something along those lines,  
11 and Mitchell got him out of there or something and drove  
12 him home.

13 Q. And we've already discussed Investigator  
14 Sullivan, and you were friends at the time, and he  
15 expressed some criticism at the way Dr. Mitchell  
16 organized his office?

17 A. Yes.

18 Q. Did you ever see any writing from Investigator  
19 Sullivan to the county attorney or anyone else about  
20 that?

21 A. Not that I recall.

22 Q. Now, were there any other medical examiners or  
23 professionals that you know of that were providing  
24 criticism of Dr. Mitchell around this time, early 1993?

25 A. Other than Rigle and Germaniuk, and who is the

1 other guy, Sawyer -- Sawyer's the toxicologist, right?

2 Q. I believe so.

3 A. Yeah. No, I don't remember anybody other than  
4 those three.

5 Q. Did you ever -- do you remember talking to  
6 Erik Mitchell regarding Dr. -- how do you pronounce it,  
7 Germaniuk?

8 A. Germaniuk.

9 Q. Can you spell that for the record?

10 A. German, G-E-R-M-A-N-I-U-K.

11 Q. Okay.

12 THE WITNESS: I believe, Elyse.

13 A. No, I don't recall talking to Dr. Mitchell  
14 about Dr. Germaniuk.

15 Q. And do you remember talking to Dr. Mitchell  
16 about a Dr. or Mr. Sawyer.

17 A. Very vaguely. They had negative opinions of  
18 each other.

19 THE WITNESS: Sid, want some water?

20 MR. MANES: Oh, thank you, Bill.

21 Q. Now, just going back to Exhibit 13, and  
22 looking at the pages with all the signatures, it's dated  
23 May 5th, 1993. Do you see that?

24 A. Yes.

25 Q. Does that refresh your recollection as to when

1 the investigation by the county attorney was finished?

2 A. No. But it, to state the obvious, it appears  
3 to be a final report dated then, so I would accept that.

4 Q. Fair enough. Now, moving on to the next page,  
5 it's actually not clear as to whether or not this was  
6 part -- actually, it's probably part of the  
7 separate -- yeah. I'm going to peel off -- let's keep it  
8 the way it is. It's already marked as an exhibit. It  
9 wasn't clear to me whether or not this was one document  
10 or multiple. But going two pages afterwards, there's a  
11 November 19th, 1993 letter from --

12 A. Rob, what are you on, Exhibit 14?

13 Q. This, this page as part of Exhibit 13.

14 A. Okay.

15 MR. JULIAN: Respectfully, I don't see  
16 that.

17 A. Here is the 13 that was marked.

18 Q. You know what? I may have peeled this off.

19 Yeah, no, I recognized earlier when I was preparing. Let  
20 me pull this off, because I just want to mark this as  
21 Exhibit 15. It's a little unclear why there is a 30 at  
22 the bottom, but let's mark this as -- what are we up to,  
23 15?

24 (Exhibit 15 marked for identification.)

25

1 BY MR. RICKNER:

2 Q. Is that the resignation letter that Erik  
3 Mitchell provided following the investigation that your  
4 office performed?

5 A. Yes, it certainly appears to be.

6 Q. Okay.

7 MR. RICKNER: We're going to mark this as  
8 Exhibit 16.

9 (Exhibit 16 marked for identification.)

10 Q. Again, I don't have -- we'll run a staple  
11 through it. Here's a paper clip if you want to put it  
12 together. Now, looking at that document, does  
13 that -- this is Exhibit 16.

14 A. Yes.

15 Q. And looking at that document, does that  
16 refresh your recollection as to whether or not Erik  
17 Mitchell continued working for the county in any capacity  
18 up until January of 1994?

19 MR. JULIAN: I don't want to get overly  
20 technical. Could we ask him to identify it  
21 first?

22 MR. RICKNER: Sure.

23 Q. Identify Exhibit 16, if you can.

24 MR. JULIAN: Thank you.

25 A. Sure. It's a -- it looks like a press release



1 dated November 19th, 1993. It's got Marty Farrell's name  
2 on it. I remember Marty very well. He was the public  
3 information officer for County Executive Pirro. And  
4 according to the press release, it appears that he would  
5 immediately -- there's a little inconsistency here.  
6 Anyway, it says -- I'll quote it. It says: Pirro said  
7 Mitchell will immediately step down as chief medical  
8 examiner and resign from all staff pathologist duties  
9 effective January 15th, 1994.

10 I say inconsistency because if he immediately  
11 steps down, he's no longer the chief medical examiner,  
12 but he apparently was doing --

13 Q. Right.

14 A. -- some material work up until January 15th,  
15 or I don't know if that was for paid purposes or  
16 whatever.

17 Q. Okay. Did he ever testify in any capacity in  
18 any prosecution between November 19th and January when he  
19 finally stepped down?

20 A. I do not recall. I can certainly make an  
21 effort to check for you if you give me an opportunity to  
22 provide that to you at a later date.

23 Q. Yeah, absolutely. We'll leave a blank in the  
24 record. Thank you.

25 Did you ever disclose the portions of your

1 investigation as Brady material in any cases?

2 A. Obviously subsequent to his resignation.

3 Honest answer is: I don't remember.

4 Q. Okay.

5 A. Would I have? Yes. You have to understand,  
6 every defense lawyer in town knew about this, so Calle  
7 being from Queens coming up and trying the case, who was  
8 aware of it as we just determined, would have been an  
9 exception, and I don't remember any specific instance  
10 where Mitchell testified in a homicide case after his  
11 resignation where somebody from outside of Syracuse was  
12 the defense lawyer.

13 I do remember getting a call from an attorney  
14 in Kansas wanting to know about Mitchell, and I sent  
15 him -- I don't remember what I sent him, but I sent him  
16 some stuff, and I think I contacted -- as a courtesy, I  
17 think I contacted the local DA out there to discuss  
18 Mitchell with him.

19 Q. And about when was that?

20 A. Oh, God. I couldn't tell you.

21 Q. Do you know if that's in any relation to the  
22 Kansas Supreme Court case involving Erik Mitchell?

23 A. No.

24 Q. You don't know or it's not?

25 A. I do not know.

1 Q. Okay.

2 A. I didn't know there was a Kansas case  
3 involving Erik Mitchell.

4 Q. Earlier on, you testified that there was  
5 potential criminal activity, and that if he was  
6 ultimately convicted, it would have been an issue for his  
7 career. Do you remember that?

8 A. Yes.

9 Q. Which specific acts constituted the crime that  
10 you were referring to?

11 A. Taking body parts from cadavers or corpses  
12 without permission.

13 Q. Okay. When you say without permission, do you  
14 mean from the family?

15 A. From the next of -- whoever had Power of  
16 Attorney or executor or executrix, whoever had the  
17 authority to consent.

18 Q. Okay. And based on your investigation,  
19 although you didn't ultimately prosecute that, that could  
20 have been a crime?

21 A. No, that would have been a crime if I could  
22 prove it beyond a reasonable doubt.

23 Q. Okay.

24 MR. RICKNER: So this is actually kind of  
25 a good place to break for lunch if everybody's

1 interested.

2 (Off record: 1:09 p.m. to 1:55 p.m.)

3 BY MR. RICKNER:

4 Q. Earlier on, you mentioned somebody named  
5 Patricia Stonecipher?

6 A. Susan Stonecipher.

7 Q. Thank you. Susan Stonecipher?

8 A. Right.

9 Q. And that's just spelled Stonecipher?

10 A. Correct, common spelling.

11 Q. Both words put together into one last name?

12 A. Correct.

13 Q. Okay. Had she provided a statement to the  
14 police initially?

15 A. She did.

16 Q. And what was that statement?

17 A. From memory, it was essentially her  
18 observations of the victim, her relationship with -- I  
19 think she was a tenant in the same building, and she  
20 indicated that the last time she saw the victim was  
21 Saturday morning because they were doing laundry.

22 She later returned to the police department  
23 and said I want to correct that, it was Friday morning  
24 because I don't work on Saturdays, and I was laundering  
25 my work outfit and I confused the two days. And the rest

1 of her affidavit, I don't recall as I sit here.

2 Q. Okay. Now, when you say that she went back to  
3 the police to correct her statement, when was that?

4 A. I believe it was May 7th.

5 Q. Okay. So back initially she corrected her  
6 statement?

7 A. That's my understanding.

8 Q. Okay. Now, as part of the -- got it.

9 MR. RICKNER: Actually, you know what?

10 Let's just mark this.

11 (Exhibit 17 marked for identification.)

12 BY MR. RICKNER:

13 Q. Now, do you recognize Exhibit 17?

14 A. I do.

15 Q. And is this -- the Susan referred to herein is  
16 Susan Stonecipher?

17 A. Yes.

18 Q. Okay. And in 1987, she actually returned to  
19 the police station and said, you know what, I got the  
20 time wrong or the date wrong, it was actually the day  
21 before?

22 A. That's not reflected in Exhibit 17, but that's  
23 my recollection.

24 Q. Okay. And did you actually speak to  
25 Ms. Stonecipher prior to -- as part of the



1 reinvestigation we discussed in 1992?

2 A. I don't recall. I would feel more comfortable  
3 saying that I did, but I just don't recall.

4 Q. Okay. And Stonecipher is  
5 S-T-O-N-E-C-I-P-H-E-R?

6 A. Correct.

7 Q. And is it your understanding that an  
8 additional police report was prepared reflecting the  
9 change in her statement?

10 A. Either a report or an additional affidavit.

11 Q. Okay.

12 A. Again, that's from memory. She testified at  
13 trial, so she would have explained it at trial. That  
14 would be the best evidence rather than my memory.

15 Q. Whose witness was she at trial?

16 A. Calle called her.

17 Q. Okay. It's your recollection that Calle was  
18 somewhat surprised to discover that she testified to a  
19 different date than what was on the report?

20 A. Well, I can't speak for him.

21 Q. You were in the courtroom, you saw what he was  
22 doing.

23 A. Not necessarily. I mean, in other words, did  
24 he manifest, like -- and for the record, I'm widening my  
25 eyes, did he manifest some surprise? Not that I

1 remember. He seemed to argue with her, as I recall, but  
2 again, the trial record speaks for itself.

3 Q. Okay. Do you remember what color hair Valerie  
4 Hill had?

5 A. My recollection is saying brown, but there's  
6 photos available of her.

7 Q. That's correct. One moment. Just let me  
8 check something.

9 Now, at some point, somebody named Joe Morgan  
10 surfaced as part of the investigation; is that right?

11 A. Yes.

12 Q. To the best of your recollection, can you  
13 explain who Joe Morgan was and what his testimony was?

14 A. He never testified.

15 Q. Or what his statement was?

16 A. His statement, as I recall, was that a Patsy  
17 Barricella had made admissions to him that he killed some  
18 girl over on Hickok, which would have been the same  
19 street that Valerie Hill lived on.

20 Q. And when did this first surface?

21 A. It would be reflected more accurately in the  
22 trial transcripts, but it was during the trial a Syracuse  
23 police officer brought it to my attention and then I  
24 immediately brought it to the court and Mr. Calle's  
25 attention.

1 Q. And was that actually during the trial?

2 A. Yes.

3 Q. Had you heard of this statement  
4 regarding -- or this statement by Mr. Morgan beforehand?

5 A. No.

6 Q. Just I want to be very clear. Had you heard  
7 of anything regarding Mr. Morgan before this time during  
8 the trial when the disclosure was made?

9 A. There was something about Joe Morgan, but it  
10 had nothing to do with this. It had nothing to do with  
11 Patsy Barricella and somebody admitting. It was  
12 something unrelated to it and I can't remember what that  
13 was.

14 Q. When you say something unrelated, do you mean  
15 just not related to Patsy Barricella or not related to  
16 this case at all?

17 A. Well, I wouldn't have mentioned it. It had to  
18 have something to do with the case, but nothing of  
19 any -- let me take that back. It had -- somehow I  
20 remember the name Morgan coming up, but it had nothing to  
21 do with anything of substance to the case or certainly  
22 not Patsy Barricella. I may be totally wrong about that.  
23 It's just my memory as I'm sitting here.

24 Q. Do you know why in your opening you might have  
25 said that the defense attorney was going to bring up

1 Morgan?

2 A. That would confirm what I just said, but no, I  
3 don't know why I would have said that. I don't remember.  
4 Do you have the transcript or --

5 Q. I do. I'm happy to -- I got it. Let me see  
6 if I can pull this out. I have too many exhibits here.  
7 Actually, right here. That's summation. I was wrong.  
8 You know what? We'll come back to it after a break.

9 A. Okay.

10 Q. I don't want to waste your time on the record.

11 MR. RICKNER: Let's mark this as 18, I  
12 believe.

13 (Exhibit 18 marked for identification.)

14 BY MR. RICKNER:

15 Q. Now, looking at that affidavit, can you tell  
16 me who signed it, the name?

17 A. MC Lazarski, L-A-Z-A-R-S-K-I, I believe.

18 Q. And who is MC Lazarski?

19 A. He was a neighbor that was interviewed in  
20 connection with a canvas that was done back in 1987 by  
21 SP -- Syracuse Police Department.

22 Q. And did you interview him as part of the  
23 reinvestigation?

24 A. I do not recall.

25 Q. Do you know if anyone else did?

1           A.     I do not know. You're talking about from my  
2 office?

3           Q.     Yeah.

4           A.     I do not know.

5           Q.     Yeah. Only within your knowledge. Now, I'm  
6 going to hand you a series -- actually, I want to kind of  
7 do these all at once to make this move a little faster.

8                   MR. RICKNER: This is 19.

9                   (Exhibit 19 marked for identification.)

10                  MR. RICKNER: This is 20.

11                  (Exhibit 20 marked for identification.)

12                  MR. RICKNER: This is 21.

13                  (Exhibit 21 marked for identification.)

14                  MR. RICKNER: And this is Exhibit 22.

15                  (Exhibit 22 marked for identification.)

16 BY MR. RICKNER:

17           Q.     Can you identify Exhibit 19 for the record?

18           A.     19 is a Syracuse Police Department  
19 inter-departmental memo, dated April 18th, 1987. It is  
20 to Lieutenant Dick Walsh from Sergeant John Kerwin, and  
21 the subject listed is Joseph Morgan.

22           Q.     Okay. And can you identify Exhibit 20 for the  
23 record?

24           A.     20 is also a Syracuse Police Department  
25 inter-departmental memo, dated May 27th, '87 to Sergeant



1 Pete Tynan from Investigator Jack Hayes, again the  
2 subject being Joseph Morgan, and then it's a space and it  
3 says Hill Homicide.

4 Q. And can you identify Exhibit 21 for the  
5 record, please?

6 A. 21 is an affidavit, dated August 2nd, 1988,  
7 from Joseph Morgan.

8 Q. And can you identify Exhibit 22 for the  
9 record?

10 A. Exhibit 22 is again a Syracuse Police  
11 Department inter-departmental memo, page two, dated  
12 April 18th, 1987, To and From are both blank, the subject  
13 Joseph Morgan, and it appears to be signed by Sergeant  
14 Kerwin. And Kerwin is K-E-R-W-I-N.

15 Q. Now, I think that given that it was marked as  
16 an exhibit at trial, can we agree that Exhibit 21 was  
17 probably turned over to the defense?

18 A. Yes.

19 Q. Okay. Do you know if what's currently marked  
20 as Exhibit 21 was turned over to the defense before trial  
21 or during the incident during trial?

22 A. Best of my recollection, this is what was  
23 turned over to me and I turned over to Mr. Calle during  
24 trial.

25 Q. Okay. Now, turning back to Exhibit 19, do you

1 know if this was something that was turned over during  
2 trial or before trial or something else?

3 A. Best of my recollection, this would have been  
4 turned over before trial. By the way, Exhibit 19 and  
5 Exhibit 22 are the same memo. 19 is page one, and 22 is  
6 page two.

7 Q. Okay. And so I guess Exhibits 19 and 22, you  
8 believe this was turned over before trial?

9 A. Yes.

10 Q. Okay. And Exhibit 20, was this turned over  
11 before trial or during trial?

12 A. I'm just reading it, if I may. I do not  
13 recall. My best recollection is that it was turned over  
14 before trial.

15 Q. Now, when you made Brady disclosures in 1993,  
16 would you include a cover letter that listed all of the  
17 documents that were being disclosed?

18 A. No, not necessarily.

19 Q. What would you do to protect yourself against  
20 allegations that something hadn't been turned over that,  
21 in fact, you had turned over?

22 A. I should have had a better procedure. I  
23 testified before that the discovery in this particular  
24 case was a little unusual because of Mr. Calle's style.  
25 For example, he served the demand to produce and forgot

1 to attach the demand to produce, but I responded to it as  
2 if he had attached it. So there would be discovery that  
3 would be documented, and then we would argue discovery in  
4 front of the trial judge. There would be a stenographer  
5 there. There would be a record of what was turned over,  
6 what was being argued about and so forth and so on.  
7 There were things that were turned over during the trial  
8 that include this referenced to Patsy Barricella, and the  
9 record, I think, talks about that.

10 Q. Okay. Going back to before trial.

11 A. Right.

12 Q. Things that you turned over before trial  
13 through this discovery procedure you just described.

14 A. Right.

15 Q. How would you document which specific document  
16 that you had turned over?

17 A. We would respond by way of affidavit to a  
18 demand to produce and any motions, Bill of Particulars,  
19 discovery, police reports, Rosario material, and that  
20 would be in -- it would be documented in my responding  
21 affidavit.

22 Q. Would your responding affidavit go document by  
23 document or would it simply say we turned over Rosario,  
24 we turned over police reports?

25 A. I don't recall in this case.

1 Q. Okay. But there should be in the file  
2 something with your signature on it that details  
3 whichever that disclosure is?

4 A. Yes, something with either my signature or I  
5 might have had an assistant DA handling discovery.

6 Q. And would that also be filed with the court?

7 A. Yes.

8 Q. Now, at some point -- withdrawn.

9 You're aware that Mr. Rivas filed a habeas  
10 petition following a 440 motion, you testified at least  
11 at one point --

12 A. Correct.

13 Q. -- you're familiar with this, right?

14 A. Correct.

15 Q. Okay. Now, around the time of the 440 and the  
16 habeas, did your office engage in any reinvestigation?

17 A. No.

18 Q. Did you perform any -- withdrawn.

19 Did anybody from your office perform any  
20 additional forensic testing? This is during -- not  
21 during the second circuit part, but during the 440 and  
22 habeas?

23 A. No.

24 Q. Who handled the 440 and habeas, to the best of  
25 your knowledge?

1 A. The gentleman's name was James Maxwell.

2 Q. And is that somebody from the Attorney  
3 General's Office or your office?

4 A. My office. He's retired. He's no longer with  
5 me.

6 MR. RICKNER: Hold on. I passed it over  
7 and I just need to find it. There it is.  
8 This is 23, I believe.

9 (Exhibit 23 marked for identification.)

10 BY MR. RICKNER:

11 Q. Now, just to set this up, you recognize the  
12 name Nanette Gordon?

13 A. Yes.

14 Q. And Nanette Gordon died under a homicide in  
15 1985?

16 A. Yes. There ' some disagreement about the  
17 cause of death, as you probably know. In my opinion, she  
18 was murdered.

19 Q. In your opinion she was murdered?

20 A. Yes, and several other pathologists, but not  
21 unanimously.

22 Q. Okay. Meaning that Erik Mitchell did not find  
23 that she was murdered?

24 A. There was a three -- three forensic  
25 pathologists were hired by the county to reexamine the



1 case, and they voted two to one that she was murdered.

2 Q. Okay.

3 A. And none of them were Erik Mitchell.

4 Q. Yeah, I'm aware. Did you engage in any  
5 investigation into the Nanette Gordon murder?

6 A. Very much so.

7 Q. Okay. And did you have any suspects?

8 A. Yes.

9 Q. And who were they?

10 A. Well, I'm not going to reveal the name, but  
11 he's deceased.

12 Q. All right. I'd like you to look at  
13 Exhibit 23.

14 A. Yes.

15 Q. Do you know who Tamara Danner is?

16 A. Yes. I remember Tamara. She was a forensic  
17 chemist at the Wallie Howard Center for Forensic  
18 Sciences.

19 Q. Okay. Now, do you know why Nanette Gordon's  
20 forensic material would have been submitted for analysis  
21 alongside Hector Rivas'?

22 A. Well, I'm not sure that happened, but -- and I  
23 got the e-mail in front of me. Are you saying that they  
24 were in one container or --

25 Q. The e-mail, I think, it appears to be what she

1 said.

2 A. Well, let's see. When opening the evidence  
3 that was to contain only the head hairs, pubic hairs, and  
4 pubic lifts from NG, I found mounted pubic hairs labeled  
5 H. Rivas.

6 I don't know how they were intermingled.  
7 Obviously, some level of incompetence had to be involved,  
8 but I don't know how they got in the same package.

9 Q. Was Hector Rivas a suspect in the Nanette  
10 Gordon murder?

11 A. No.

12 Q. When you say somebody deceased, you're talking  
13 about someone else?

14 A. Yes.

15 Q. All right. Following the 440 and the habeas,  
16 there was the appeal to the second circuit where the  
17 conviction of Hector Rivas was overturned; fair to say?

18 A. Correct.

19 Q. Okay. And that was in, roughly, 2015?

20 A. Correct.

21 Q. Now, following over -- the overturning of the  
22 conviction, was the investigation reopened?

23 A. No. I mean, we had the right guy. There was  
24 certain evidence that because of developments in forensic  
25 science that were not available to us in '92 -- or, yeah,

1 '92 and '93 that were tested. For example, the cigarette  
2 butts, I think there were six of them, five or six of  
3 them on Valerie's kitchen table in the ashtray.

4 The fingerprint evidence was reexamined  
5 because we had, in my judgment, a very, very  
6 highly-skilled individual by the name of Mark Mills who  
7 had been working for several years but was not employed  
8 back in the '90s at the Forensic Science Center. The  
9 Forensic Science Center didn't exist in the early '90s.

10 The marijuana pipe was tested. We also tested  
11 the clothing, the swabbing from the deceased, the belt  
12 that had been used to strangle her, and I think that's  
13 about it.

14 Q. All right. And besides the forensic testing,  
15 were witnesses from the original prosecution contacted  
16 and interviewed?

17 A. Not by me. I was involved in an extremely  
18 high-profile murder case at the time, and I relied on Rob  
19 Moran to handle the nuts and bolts. I don't recall Rob  
20 Moran or an investigator under his command interviewing  
21 or re-interviewing any witnesses. I think he probably  
22 would have told me about that.

23 Q. Okay. To your knowledge, there was no  
24 interviews of witnesses or anything like that?

25 A. To my knowledge, that's correct.

1 Q. Okay. And as part of the forensic testing,  
2 was there any testing done against Joe Morgan's DNA or  
3 anything else available regarding him?

4 A. Well, the testing that was done was to  
5 determine if DNA could be identified, so it wasn't as if  
6 anyone went in with a preconceived conclusion. Once a  
7 profile was developed, it was then either compared to  
8 known samples or run through CODIS. I'm pretty sure  
9 you're aware of the results.

10 Q. It's Patsy Barricella?

11 A. Cella, with a C.

12 Q. B-A-R-I-C-E-L-L-A?

13 A. Yeah. And I'm sorry to interrupt you. Best  
14 of my recollection, B-A-R-R-I-C-E-L-L-A. There could be  
15 one too many Rs in there, but that's my recollection.

16 Q. The one unredacted copy I have, it's just  
17 difficult to read. But Patsy --

18 A. Yes.

19 Q. -- did you have DNA profiles of him available  
20 for testing?

21 A. I don't know if he's in CODIS or not.

22 Q. Okay. Do you know if Rob Moran made any  
23 efforts to try to get DNA profiles from him?

24 A. I'm sure he would have told me of that, and he  
25 made no mention of that to me. I don't even know if

1 Patsy Barricella is still alive.

2 Q. Okay. Did you do any investigation --  
3 withdrawn.

4 Did you or your office or Rob Moran do any  
5 investigation into any alternate suspects following the  
6 reversal of Mr. Rivas' conviction?

7 A. Absolutely not.

8 MR. RICKNER: Mark this as Exhibit 24.

9 (Exhibit 24 marked for identification.)

10 BY MR. RICKNER:

11 Q. Can you identify Exhibit 24 for the record?

12 A. Exhibit 24 is a lab report from the Wallie  
13 Howard Forensic Science Center.

14 Q. Now --

15 A. I'm just trying to get the date. Dated  
16 December 10th, 2019.

17 Q. Now, is it fair to say that Hector Rivas died  
18 in 2016?

19 A. I'll take your representation on that. I know  
20 he's dead.

21 Q. Do you know why forensic testing was being  
22 performed three years after?

23 A. After his death?

24 Q. Yes.

25 A. I know that testing was done -- or I know



1 these items were submitted in 2015 in preparation for the  
2 trial, and I -- they may have ended -- they may have  
3 stopped what they were doing. For example, there's  
4 swabbings from the pipe. I don't see that reflected  
5 here, but I know that results did come from the pipe and  
6 the cigarettes, and that's not reflected in this exhibit.  
7 So I may have asked the lab to conclude these  
8 investigations in anticipation of this litigation.

9 Q. Okay. So you're saying that it's possible  
10 that you continued to do forensic testing knowing that  
11 there were civil suits coming?

12 A. That's -- that would make sense to me, and I  
13 believe that's true.

14 Q. Okay. Besides these DNA tests, were there any  
15 other forensic tests done in preparation for civil  
16 litigation?

17 A. Not that I'm aware of. The fingerprint  
18 evidence on the library book came back, I'm fairly  
19 certain, in 2015, and the cigarette DNA belonging to  
20 Mr. Rivas, again, I'm fairly certain came back in 2015.  
21 I don't recall, unless there's a report to contradict me,  
22 I don't recall any other items. I know -- well, this  
23 reflects that we were looking at the clothing that she  
24 was wearing. I don't see anything relative to the rape  
25 kit, so I would just leave open the possibility that that

1 may have been examined, as well.

2 Q. Do you know somebody by the name of Josh  
3 Marquis, M-A-R-Q-U-I-S?

4 A. Yes.

5 Q. Who is he?

6 A. He's the former district attorney of Clatsop,  
7 C-L-A-T-S-O-P, County, Oregon, and a very, very good  
8 friend of mine, and a superior legal mind.

9 Q. Okay. And where does he -- excuse me if I  
10 don't know the geography. What state does he live in?

11 A. Oregon.

12 Q. Okay. And is he still the DA there?

13 A. No. He's retired.

14 Q. When did he retire?

15 A. Oh, four, five years ago.

16 Q. Did you ever discuss this matter with him?

17 A. I was going to say, I don't remember, but you  
18 got his name from somewhere, so maybe I did.

19 Q. Okay. Now, do you know somebody named  
20 Jack M. Ryan?

21 A. Yes.

22 Q. Who is that?

23 A. Jack is the former chief assistant DA in  
24 Queens County. He is currently working in Rockland  
25 County. He's had a very, very long and distinguished

1 legal career. He was the special prosecutor in the  
2 Tawana Brawley case for Bob Abrams, among the more  
3 high-profiled cases that he's handled. And when Judge  
4 Brown passed away and Melinda Katz took office, Jack  
5 retired from Queens and was picked up by the DA in  
6 Rockland to essentially run the office. And in addition  
7 to that, he's a very close friend of mine.

8 Q. Now, do you know somebody named RJ Masters?

9 A. Yes, Bob Masters, very similar career to Jack.  
10 He was also a chief under Judge Brown, retired when  
11 DA Katz took over, and he's also, as far as I know, in  
12 Rockland County.

13 Q. Okay. And do you know somebody named ED  
14 Saslaw?

15 A. Ed Saslaw.

16 Q. Ed Saslaw?

17 A. Yes.

18 Q. And who is that?

19 A. Ed worked under Judge Brown. He was kind of  
20 the law guy. He's been an advisor to the New York State  
21 DA's Association, and I'm fairly certain he currently  
22 works for Dave Hoovler, the Orange County DA.

23 Q. And do you know who Rick Trunfio is?

24 A. Yes. Trunfio, T-R-U-N-F-I-O. Rick was for  
25 many years my chief assistant DA, but he retired, oh, I

1 think two years ago.

2 Q. Okay. So he's somebody who worked for you?

3 A. Correct.

4 Q. Now, in the last, let's say -- since the  
5 reversal of Mr. Rivas' conviction, have you spoken to  
6 William Sullivan about this case?

7 A. Let's see. That would have been '15, right?  
8 I'm certain I've spoken to Bill Sullivan since 2015,  
9 because he was a witness for me in a case that was  
10 retried. But have I spoken to him since then about -- I  
11 do not recall. If I did, it wasn't of any great  
12 substance.

13 MR. RICKNER: Can we -- we've been going  
14 about not quite an hour, but I actually might  
15 be wrapping up, so I'd just like to look over  
16 my notes and the exhibits.

17 MR. JULIAN: All right.

18 (Off record: 2:39 p.m. to 2:42 p.m.)

19 BY MR. RICKNER:

20 Q. During your work with Erik Mitchell, was there  
21 ever a time where he expressed an opinion that you  
22 personally found unreliable and you didn't want to use as  
23 part of the prosecution?

24 A. Talking about an opinion regarding cause of  
25 death, the manner of death?



1 Q. Within his expertise.

2 A. Yeah.

3 Q. Not --

4 A. Not an opinion on the Yankees or something. I  
5 don't recall one, sir.

6 Q. Okay. Do you recall anyone in your office  
7 expressing concern about a professional opinion within  
8 Dr. Mitchell's expertise that they didn't feel was  
9 reliable that they could otherwise use as part of the  
10 prosecution?

11 A. I don't recall, no.

12 Q. Okay. Do you recall any instance during your  
13 work with Erik Mitchell or during your office's work with  
14 Erik Mitchell when a judge excluded his opinion for any  
15 reason?

16 A. No.

17 Q. During your work with him or your office's  
18 work with him, did you ever observe Dr. Mitchell being  
19 erratic or otherwise acting in a manner that concerned  
20 you?

21 A. I remember being at his house once and a goat  
22 came in through the kitchen, which I found odd, and I  
23 explained that to him, and he just said, hey, I live on a  
24 farm. I mean, let's be candid, lawyer to lawyer, you got  
25 to be a little unusual to want to cut up dead bodies for



1 your profession. And my answer is no, I had no  
2 reservations about his mental competency, his expertise,  
3 and his dedication to his work.

4 Q. So Dr. Mitchell lived on a farm?

5 A. Well, I'm from Brooklyn, so my definition of a  
6 farm might not be the same as everybody else's, but he  
7 lived in a country house in Skaneateles. I forget why I  
8 was there.

9 Q. How many times do you think you went to his  
10 house there?

11 A. Oh, just that one time.

12 Q. Okay. And he raised animals or just had goats  
13 as a pet?

14 A. I don't know. I don't think the goat was a  
15 pet. So I don't know.

16 Q. Would you describe Dr. Mitchell as eccentric?

17 A. Yes.

18 Q. Was there ever an instance where Dr. Mitchell  
19 was willing to provide an opinion that no other  
20 pathologist was willing to provide?

21 A. Not to my knowledge. I never encountered  
22 that. In other words, where I -- like, I medical  
23 examiner shopped, no. No, it never happened.

24 Q. Were there cases that you believe you could  
25 not have gotten a conviction on without Dr. Mitchell's

1 testimony?

2 A. Every one he testified to. I'm a homicide  
3 prosecutor. You can't convict somebody in a homicide  
4 case without a cause of death by a -- certified by a  
5 competent forensic pathologist.

6 Q. Beyond cause of death, were there other  
7 details that he would provide as part of his expertise  
8 that were invaluable to securing prosecutions?

9 A. I wouldn't say invaluable. If I was choosing  
10 the words, it would be very, very helpful. As you know  
11 as an experienced lawyer, expert witnesses fall into  
12 different categories, this guy is great, this person  
13 stinks, you know. It's just communicative skills, it's  
14 expressions, it's explaining the complex in a simple  
15 manner so the least educated juror understands it as well  
16 as the person who's got a PhD.

17 Q. And when allegations of misconduct started  
18 coming out 1991, '92, '93 about Dr. Mitchell, were you  
19 worried about losing him?

20 A. Yes. I think -- yeah, I think I expressed  
21 that, I don't want to see the guy, you know, I don't need  
22 this crap, I'm leaving.

23 Q. Prior to when your office's investigation  
24 started, do you believe you took steps to try to protect  
25 Dr. Mitchell from scrutiny?

1 A. Did I take steps?

2 Q. Yes.

3 A. No. I mean, I might have given him -- I might  
4 have sat down with him and talked to him about his  
5 management style, but if I did, I don't recall.

6 Q. Did you ever defend him in the press?

7 A. Yes.

8 Q. And was the reason -- did you ever defend him  
9 from scrutiny against other public officials maybe not  
10 necessarily in public?

11 A. No.

12 Q. After you took office -- sorry. Did you want  
13 to finish?

14 A. No. I was just coughing.

15 Q. Gotcha. After you took office, besides the  
16 medical examiners that we've talked about, did anybody  
17 else come to you and say, you know, look, I'm concerned  
18 about Dr. Mitchell, besides the people we've discussed  
19 already?

20 MR. JULIAN: I guess I'm going to object  
21 to the form of the question. I'm not looking  
22 to -- after he took office ever at any time?

23 MR. RICKNER: After he took office until  
24 the following year.

25 A. I understand your question to be did somebody

1 come up to me and say, hey, this guy is crazy or he  
2 stinks --

3 Q. Sure, or anything else in a similar vein?

4 A. Other than the people we've discussed, none  
5 that come to mind, no.

6 MR. RICKNER: I don't think I have any  
7 further questions. You guys got any?

8 MR. JULIAN: Nope.

9 MR. VENTRONE: I think we're good.

10 MR. JULIAN: We decline.

11 (Proceedings concluded at 2:48 p.m.)

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1 REPORTER'S CERTIFICATE

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3 I, ELYSE M. ADDABBO, Court Reporter and  
4 Notary Public, certify:

5 That the foregoing proceedings were taken before me  
6 at the time and place therein set forth, at which time  
7 the witness was put under oath by me;

8 That the testimony of the witness and all  
9 objections made at the time of the examination were  
10 recorded stenographically by me and were thereafter  
11 transcribed;

12 That the foregoing is a true and correct transcript  
13 of my shorthand notes so taken;

14 I further certify that I am not a relative or  
15 employee of any attorney or of any of the parties nor  
16 financially interested in the action.

17

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19



20

21

ELYSE M. ADDABBO, Court Reporter  
Notary Public

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